

# **EXHIBIT 4**

Case No. 14-CV-704-GKF-JFJ



<p>1 (Appearances continued.)</p> <p>2 On behalf of the INTERVENOR-PLAINTIFF:</p> <p>3     Abi Fain  4     Mary Katherine Nagle  5     PIPESTEM &amp; NAGLE  6     401 South Boston Avenue, Suite 2200  7     Tulsa, Oklahoma 74103  8     (918)936-4705  9     mknagle@pipestemlaw.com</p> <p>10 On behalf of the DEFENDANTS:</p> <p>11     Thomas J. McCormack  12     Robert Kirby  13     NORTON ROSE, FULBRIGHT  14     1301 6th Avenue  15     New York, New York 10019  16     (212)318-3000  17     thomas.mccormack@nortonrosefulbright.com  18     robert.kirby@nortonrosefulbright.com</p> <p>19 ALSO PRESENT: Christina Watson; Michelle Hammock; Julie  20 Combs; Megan Beauregard, Enel in-house counsel; Beatrice  21 Saiz, Enel in-house counsel</p> <p>22 VIDEOGRAPHER: Sean Shell</p>	<p>Page 2</p>	<p>1 THE VIDEOGRAPHER: This is the videotaped</p> <p>2 deposition of Francesco Venturini, taken on behalf of the</p> <p>3 Intervenor-Plaintiff, in the matter of the United States</p> <p>4 of America, Plaintiff, Osage Mineral Council,</p> <p>5 Intervenor-Plaintiff, versus Osage Wind, LLC, et al.,</p> <p>6 filed in the United States District Court for the Northern</p> <p>7 District of Oklahoma, Case Number 14CV-704-GFK-JFJ.</p> <p>8 This deposition is being held via web conference</p> <p>9 on Monday, September 13, 2021. We're on the record at</p> <p>10 7:04 a.m.</p> <p>11 Will counsel please state their appearances for</p> <p>12 the record.</p> <p>13 MR. McCORMACK: Yes. This is Tom McCormack with</p> <p>14 Norton Rose Fulbright on behalf of the witness, and with</p> <p>15 me is my colleague, Bob Kirby, also from Norton Rose</p> <p>16 Fulbright, and Megan Beauregard from Enel, also a lawyer</p> <p>17 in-house.</p> <p>18 MS. FAIN: This is Abi Fain from Pipestem and</p> <p>19 Nagel on behalf of the Osage Minerals Council as the</p> <p>20 Intervenor-Plaintiff, and with me I have Mary Katherine</p> <p>21 Nagel and Julie Combs.</p> <p>22 MR. ASHWORTH: Stuart Ashworth, on behalf of the</p> <p>23 United States. With me are attorneys Nolan Fields and</p> <p>24 Cathy McClanahan. I also have paralegals Christiana</p> <p>25 Watson and Michelle Hammock.</p>	<p>Page 4</p>
<p>1 INDEX</p> <p>2 Page</p> <p>3 Direct Examination by Mr. Fain 5</p> <p>4 Cross-Examination by Mr. Ashworth 99</p> <p>5 STIPULATIONS</p> <p>6 It is stipulated that the deposition of</p> <p>7 Francesco Venturini may be taken pursuant to agreement and</p> <p>8 in accordance with the Federal Rules of Civil Procedure on</p> <p>9 September 13, 2021, before Karli Daniels, CSR, RPR, CCR.</p>	<p>Page 3</p>	<p>1 MR. McCORMACK: Okay. Let's go.</p> <p>2 THE VIDEOGRAPHER: The court reporter will now</p> <p>3 please swear in the witness.</p> <p>4 WHEREUPON,</p> <p>5 FRANCESCO VENTURINI,</p> <p>6 after having been first duly sworn, deposes and says in</p> <p>7 reply to the questions propounded as follows, to-wit:</p> <p>8 DIRECT EXAMINATION</p> <p>9 BY MS. FAIN:</p> <p>10 Q Okay. Thank you, Mr. Venturini, for joining us</p> <p>11 this morning here and this afternoon where you are. We'll</p> <p>12 start off with some general questions, but I just want to</p> <p>13 make sure that you know we'll hopefully proceed in a</p> <p>14 conversational manner, and -- but if a time comes up where</p> <p>15 you'd like to take a break or need to stop for a moment,</p> <p>16 we are free to do that.</p> <p>17 First off, have -- or --</p> <p>18 MS. FAIN: And, I'm sorry. I just want to</p> <p>19 clarify. There is somebody on named Beatrice Saiz.</p> <p>20 MS. SAIZ: (Nods head.)</p> <p>21 MS. FAIN: Oh, and can you identify who you're</p> <p>22 with?</p> <p>23 MS. SAIZ: Yes. I'm Enel in-house as well.</p> <p>24 MS. FAIN: Okay. Thank you.</p> <p>25 MR. McCORMACK: My apologies. I forgot to</p>	<p>Page 5</p>

<p>1 mention Beatrice. She's also on for Enel.</p> <p>2 MS. FAIN: Okay. Thank you so much.</p> <p>3 <b>Q (BY MS. FAIN) Mr. Venturini, have you ever</b></p> <p>4 <b>testified in a deposition before today?</b></p> <p>5 A Nope.</p> <p>6 <b>Q Have you -- can you tell us if you've done</b></p> <p>7 <b>anything to prepare for today's deposition?</b></p> <p>8 A Yes. I met with my lawyers.</p> <p>9 <b>Q Okay. And besides your attorneys, have you</b></p> <p>10 <b>spoken with anybody else in preparation for the</b></p> <p>11 <b>deposition?</b></p> <p>12 A Other than my wife, no.</p> <p>13 <b>Q Okay. Do you hold any degrees, any college</b></p> <p>14 <b>degrees?</b></p> <p>15 A Yes, I do. I have a bachelor's degree in</p> <p>16 economics, and then I have a master's degree in the school</p> <p>17 of management at Sloan MIT.</p> <p>18 <b>Q Okay. And have you ever received any kind of</b></p> <p>19 <b>formal training in construction matters?</b></p> <p>20 A No. I'm not an engineer by background.</p> <p>21 <b>Q Have you ever received any formal training with</b></p> <p>22 <b>respect to Indian Trust property?</b></p> <p>23 A No, I haven't.</p> <p>24 <b>Q And what experience do you have with</b></p> <p>25 <b>interpreting United States federal statutes and</b></p>	<p>Page 6</p>	<p>1 <b>Q What about non-Enel entities, have you served on</b></p> <p>2 <b>boards for any companies that are not -- were not owned by</b></p> <p>3 <b>Enel at the time you served on their board?</b></p> <p>4 A If -- sorry. I'm not sure I understand the</p> <p>5 question.</p> <p>6 <b>Q Sure. Sure. Are there -- are there any</b></p> <p>7 <b>companies where -- that you have served as a board member</b></p> <p>8 <b>for, that during the time you served as -- on the board,</b></p> <p>9 <b>that company was not owned by Enel?</b></p> <p>10 A If I have served as a board member in other</p> <p>11 companies not owned by Enel during the past 20 years?</p> <p>12 <b>Q Even the past ten years.</b></p> <p>13 A Oh, yes. I did, and I still do.</p> <p>14 <b>Q Can you -- do you have the names of what those</b></p> <p>15 <b>companies are?</b></p> <p>16 MR. McCORMACK: Counsel, can you -- can you tell</p> <p>17 me why we're getting into this? I mean, the Court has</p> <p>18 ordered that the only entities that are relevant are the</p> <p>19 three entities that are defendants in this lawsuit.</p> <p>20 There's been specific Court orders on that subject matter.</p> <p>21 Why are we talking about entities that are unrelated to</p> <p>22 Enel and asking questions about those? I'm kind of</p> <p>23 curious as to your thinking on that.</p> <p>24 MS. FAIN: Well, I think that, you know, as the</p> <p>25 questions will begin to play out, that there have been</p>	<p>Page 8</p>
<p>1 <b>regulations?</b></p> <p>2 A I would say general management classes, yeah.</p> <p>3 <b>Q I'm going to go ahead and ask some general</b></p> <p>4 <b>questions about your involvement and history on wind</b></p> <p>5 <b>energy projects. Have you been involved with any wind</b></p> <p>6 <b>energy entities besides Enel?</b></p> <p>7 A As -- I just -- I mean, my job has been Enel for</p> <p>8 the past 22 years. So when you're talking about</p> <p>9 "entities", obviously you use SPB's at different projects,</p> <p>10 different Enel entities, but always owned by Enel.</p> <p>11 <b>Q Okay. And let's see. Can you provide the names</b></p> <p>12 <b>of any wind-energy-related entities where you have served</b></p> <p>13 <b>as a board member?</b></p> <p>14 A I don't recall any of them, honestly. I have,</p> <p>15 but I have no idea.</p> <p>16 <b>Q Can you -- do you have like a ballpark idea of</b></p> <p>17 <b>how many --</b></p> <p>18 A No.</p> <p>19 <b>Q -- or has it been less than ten?</b></p> <p>20 A I honestly don't know. I mean, the SPB's are</p> <p>21 built for -- as you know, they're risking the general</p> <p>22 structure of the government, so around many. You do them</p> <p>23 to develop a project. You do some of them to build the</p> <p>24 project. You do some others to finance the project. I</p> <p>25 have no idea, to be honest with you.</p>	<p>Page 7</p>	<p>1 times, like here, where, you know, the final agreement</p> <p>2 between Enel and Tradewind were not closed, but</p> <p>3 Mr. Venturini was on the board for Enel but he was also</p> <p>4 serving on the board at Tradewind at the time of the</p> <p>5 transaction.</p> <p>6 MR. McCORMACK: Okay. I'm happy to let you ask</p> <p>7 the questions. I just -- I -- just be mindful of the fact</p> <p>8 that we fought about what he's entitled to be asked about</p> <p>9 or discovered, generally, and the Court was very clear</p> <p>10 that he's talking about these three Enel entities. So I'm</p> <p>11 an accommodating guy, I'll let you ask some questions, but</p> <p>12 just be mindful that that's really what the Court is</p> <p>13 dictating in some of the prior decision-making, which I</p> <p>14 read over the weekend.</p> <p>15 But go ahead.</p> <p>16 MS. FAIN: Okay.</p> <p>17 MR. ASHWORTH: I would just interject real</p> <p>18 quick. I'm having just a slight difficulty hearing Mr.</p> <p>19 Venturini. I just want to verify that the court</p> <p>20 reporter's hearing the answers of Mr. Venturini or having</p> <p>21 any issues.</p> <p>22 THE REPORTER: I am hearing him. He's coming</p> <p>23 through a little bit lightly.</p> <p>24 So if you could speak up a little bit, that</p> <p>25 would be good, or move a little closer to the mic.</p>	<p>Page 9</p>

<p>Page 10</p> <p>1 THE WITNESS: I can put headphones on, if 2 necessary, but otherwise, if you -- 3 MR. ASHWORTH: I'm having -- 4 THE WITNESS: Can you hear me now? 5 THE REPORTER: Yes. 6 MR. McCORMACK: And one thing I'll also suggest, 7 and I recognize these are kind of odd scenarios that we 8 are typically not in by doing this by video, but it would 9 be good for both the questioner and Mr. Venturini to allow 10 each other to finish speaking before either one of us 11 starts talking again, because I noticed that a couple 12 times. So let's try to maintain that as well. 13 Sorry, Counsel. Go ahead. 14 <b>Q (BY MS. FAIN) Okay. Mr. Venturini, can you name</b> 15 <b>some of the entities that you served on their board, and</b> 16 <b>we'll make it in the past ten years, that when you served</b> 17 <b>on the board, they were not owned by Enel?</b> 18 A I cannot recall all of them. I can tell you 19 that today I'm in the board of a company called CESI, 20 which is a company making - how shall I say - 21 certification for analytical machinery. I'm in the board 22 of several associations of -- regarding specialty 23 electro-mobility. I was in the board of a company in the 24 United States called Sentient Science until six months 25 ago. I was in the board of a couple startups of -- in the</p>	<p>Page 12</p> <p>1 <b>Enel had some type of complex agreement around development</b> 2 <b>opportunities. Do you have a general idea of when that</b> 3 <b>agreement was entered?</b> 4 A Not really. I mean, when I arrived in the 5 United States, it was 2010, 2011. Tradewind was having 6 some financial issues, so -- and we just restructured the 7 deal at the time. And I think we restructured the deal 8 more than once, so -- during the past -- during the past 9 years. They're very, very quick developers, and we wanted 10 to make sure that we could use their services, so we 11 helped them every time that they had financial trouble. 12 They were not just developing for Enel, but they were a 13 very important developer to us. 14 <b>Q At the time you were serving on Tradewind's</b> 15 <b>board, do you recall how many members were on the board</b> 16 <b>with you?</b> 17 A No. I think -- I'm assuming, because I don't 18 remember exactly names. I'm assuming on our side it was 19 me and probably Mike Storch, and on their side, I'm sure 20 it was Rob Freeman. The three shareholders, so -- main 21 shareholders. So Rob Freeman; Matt. I don't even recall 22 the names of the other two guys. Forgive me, but I don't 23 recall their names. 24 <b>Q Sorry. So is it your recollection that there</b> 25 <b>were five members on the board or --</b></p>
<p>Page 11</p> <p>1 past. And as you mentioned, to be honest with you, I 2 didn't even recall, but probably I was also on the board 3 of Tradewind at the time. 4 <b>Q With respect to Tradewind, do you recall what</b> 5 <b>years you served on the board?</b> 6 A No. What I'm imagining is that, when I arrived 7 in the United States, probably 2012, 2011, up to when I 8 left in 2015. 9 <b>Q And on that same line of questioning with regard</b> 10 <b>to the Tradewind board, how is it that you became a member</b> 11 <b>of that board? Were you invited by somebody at Tradewind?</b> 12 A It was -- Tradewind is a company developing wind 13 projects. We had -- we used them to develop several wind 14 projects in the United States. We had a -- we owned a 15 share of Tradewind at the time, and we had a very complex 16 agreement in terms of development of new projects. And 17 because we own part of Tradewind, I would guess I was 18 invited to join the board, yes. 19 <b>Q Do you -- you mentioned a complex agreement with</b> 20 <b>Tradewind. Do you know the ballpark date of when that</b> 21 <b>agreement was entered regarding development projects</b> 22 <b>between the two?</b> 23 A Excuse me. What did -- what did -- what did you 24 say? What kind of data? 25 <b>Q You had -- you had mentioned that Tradewind and</b></p>	<p>Page 13</p> <p>1 A Five or more. I mean, I -- my recollection was 2 that there were the three of them and some others on our 3 side, but I don't remember recall their names. 4 <b>Q Okay. Thank you. And let's see. I think</b> 5 <b>when -- you mentioned that you came to the United States</b> 6 <b>around 2010 or so, but when did you become an Enel</b> 7 <b>employee in the first instance? When were you first hired</b> 8 <b>by Enel?</b> 9 A December 15, 1997. 10 <b>Q And which Enel entity was it that employed you</b> 11 <b>at that time?</b> 12 A It was the Enel SPA. At the time there only -- 13 it was essentially only one big Enel. It was before the 14 impounding process when it was split in different 15 companies, in different entities. I think it was year 16 2000 or 1999. 17 <b>Q And since -- since 1997, since you first joined</b> 18 <b>Enel, what positions have you held at Enel?</b> 19 A I was hired, as I said, 15th December 1997, so I 20 would say early 1998, as a controller, financial 21 controller. Then I moved into the position -- and I was 22 hired because, at the time, Enel was going through the 23 impounding and they had the idea of going public and I had 24 some experience with public companies. Financial 25 controller, Enel SPA, then I became the CFO of the holding</p>

<p>Page 14</p> <p>1 company. Then I moved to be internal auditor for the</p> <p>2 distribution company, and then I became the CFO of the gas</p> <p>3 division, natural gas division. And then I came back and</p> <p>4 I was the head of the back office for the retail division,</p> <p>5 and then I was the head of finance for Enel Green Power.</p> <p>6 Then I became the BD, head of BD for North America, then</p> <p>7 CEO, president CEO of Enel Green Power North America, and</p> <p>8 then president and CEO of Enel Green Power. And then</p> <p>9 today, I'm the CEO of Enel X.</p> <p>10 <b>Q Okay. And when was it that you became president</b></p> <p>11 <b>of Enel Green Power North America?</b></p> <p>12 A I think it was 2011, but I cannot recall the</p> <p>13 exact month.</p> <p>14 <b>Q And what year did that title change or what year</b></p> <p>15 <b>did your position change after 2011?</b></p> <p>16 A May 2014, my -- the CEO of Enel Green Power was</p> <p>17 appointed the CEO of the whole Enel group, and I became</p> <p>18 the CEO of Enel Green Power. So between May 2014 and</p> <p>19 September, October of that year, I essentially went back</p> <p>20 and forth, but I was mostly in Italy, and for several</p> <p>21 reasons. I was very, very busy in figuring out what the</p> <p>22 new job was all about. I mean, Enel Green Power is a very</p> <p>23 big company working all over the world. Then I had to</p> <p>24 move back my family from the United States to Rome, and</p> <p>25 then at the time I was also going to school. I was going</p>	<p>Page 16</p> <p>1 was now the president CEO of a -- what I would call a</p> <p>2 division of Enel Green Power. So the entity was Enel</p> <p>3 Green Power North America, but, I mean, we were</p> <p>4 essentially taking care of the business in the United</p> <p>5 States and Canada, then I became the CEO of public company</p> <p>6 with about 30 percent of the stock traded in Milan and in</p> <p>7 London and did business worldwide.</p> <p>8 So from having, you know, four or five different</p> <p>9 projects in North America in construction, I became the</p> <p>10 CEO of a big group with tens, probably hundreds of</p> <p>11 projects in construction at the same time. So it was</p> <p>12 completely a different beast, a completely different</p> <p>13 animal.</p> <p>14 <b>Q In that time, before 2014 and after 2014, what</b></p> <p>15 <b>was your -- what was your relationship with Enel Kansas?</b></p> <p>16 A I'm not even sure what Enel Kansas is. I'm</p> <p>17 assuming it's an SPB controlled by Enel Green Power North</p> <p>18 America, but I have no information regarding Enel Kansas</p> <p>19 as it is. I have no idea.</p> <p>20 <b>Q When was it that you left EGP North America?</b></p> <p>21 A In -- what do you mean? What sense?</p> <p>22 <b>Q After -- you've stated that you're now at Enel</b></p> <p>23 <b>X. Were you -- was there -- did you leave Enel Green</b></p> <p>24 <b>Power North America and go directly to Enel X or was there</b></p> <p>25 <b>something in there?</b></p>
<p>Page 15</p> <p>1 to MIT, so I had to do -- it was a crazy life back and</p> <p>2 forth for several months until the new CEO, president CEO</p> <p>3 of Enel Green Power North America was appointed. Then</p> <p>4 once again in 2000 -- May 2017, from being the president</p> <p>5 CEO of Enel Green Power, I was appointed as the CEO of</p> <p>6 Enel X, a completely different division, different company</p> <p>7 of Enel.</p> <p>8 MR. McCORMACK: Madam Court Reporter, would you</p> <p>9 please read back the question that was just asked to Mr.</p> <p>10 Venturini.</p> <p>11 THE REPORTER: Yes.</p> <p>12 (The requested portion is read back by the</p> <p>13 reporter.)</p> <p>14 MR. McCORMACK: Okay. Thank you.</p> <p>15 THE REPORTER: You're welcome.</p> <p>16 <b>Q (BY MS. FAIN) Can you describe how your</b></p> <p>17 <b>responsibilities changed when your position changed from</b></p> <p>18 <b>2011 to 2014?</b></p> <p>19 A From 2011 to 2014?</p> <p>20 <b>Q When -- sorry. When you had your position as</b></p> <p>21 <b>president of Enel Green Power North America in 2011 and</b></p> <p>22 <b>then in May 2014 you became CEO, how did your</b></p> <p>23 <b>responsibilities with that -- what did -- what changed</b></p> <p>24 <b>with your responsibilities?</b></p> <p>25 A Responsibilities changed completely. I mean, I</p>	<p>Page 17</p> <p>1 A There was a project in there. In May 2014, from</p> <p>2 being the head of Enel Green Power North America, I became</p> <p>3 the head of Enel Green Power. So we're talking about,</p> <p>4 again, a big company with several thousand employees all</p> <p>5 over the world. And then in 2017, I left Enel Green Power</p> <p>6 and I became the CEO of Enel X. So this is the jump from</p> <p>7 a company owned by Enel Green Power, Enel Green Power</p> <p>8 North America, into a completely different division in</p> <p>9 2017 doing completely different stuff. My business today</p> <p>10 is mostly software and other digital tools.</p> <p>11 <b>Q Thank you. That clarification was very helpful.</b></p> <p>12 <b>I think I was stuck on Enel Green Power North America a</b></p> <p>13 <b>little longer than I realized, so thank you for clarifying</b></p> <p>14 <b>that.</b></p> <p>15 <b>Let's see. When you were at EGPNA, did you</b></p> <p>16 <b>have -- did you have authority to approve or deny any</b></p> <p>17 <b>actions related to wind projects within -- that were under</b></p> <p>18 <b>your scope of review or management?</b></p> <p>19 A I had a lot of power, but I'm not sure that I</p> <p>20 had the power of stopping everything at that time. I was</p> <p>21 appointed to a CEO of Enel Green Power. I had to justify</p> <p>22 any of such big decisions I was going to make. So I</p> <p>23 love -- would love to feel like I was fully independent,</p> <p>24 but I had a boss like everybody else, and I had to respond</p> <p>25 to my boss.</p>



<p style="text-align: right;">Page 18</p> <p>1 <b>Q What -- who was your boss? Who did you answer</b>  2 <b>to when it came to those decisions?</b>  3 A My boss was and still is Francesco Starace.  4 Francesco Starace was at the time the CEO of Enel Green  5 Power, and today, he is the CEO of Enel.  6 <b>Q In that time when you were making decisions</b>  7 <b>at -- you know, for Enel Green Power North America, you</b>  8 <b>said you had to -- there were several considerations</b>  9 <b>that -- you know, that were part of justification for any</b>  10 <b>decision that you made in your role. What types of</b>  11 <b>considerations played into how you justified certain</b>  12 <b>decisions you made?</b>  13 A I had -- I don't know what you mean with  14 "consideration". I mean, I obviously had business  15 reviews. I had phone calls with my boss to educate him on  16 different subjects. There was an investment -- there were  17 and there are still investment committees I have to bring  18 a project to for approval. So I guess I had many  19 different interactions. So if I had to, you know, make an  20 important decision, I had to share it with the rest of the  21 management team.  22 <b>Q Who else was on the management team that you</b>  23 <b>would communicate with?</b>  24 MR. McCORMACK: Counsel, can you give us a time  25 frame?</p>	<p style="text-align: right;">Page 20</p> <p>1 was.  2 <b>Q In the case of the Osage Wind project, who would</b>  3 <b>you have spoken to regarding permitting issues and</b>  4 <b>relations with the federal government?</b>  5 A I would have spoken -- it depends on the  6 importance of the information. I had -- I mean, it's very  7 difficult to give you a straight answer. If it was  8 something about the development of the project, I was  9 going to discuss it with my head of development in the  10 United States and maybe even with the head of development  11 in Rome, maybe with the legal counsel.  12 I -- actually, I mean, if we're talking about  13 legal issues, 100 percent with the legal counsel, local  14 and maybe in Rome even. It depends very much on the  15 matter.  16 <b>Q Do you recall at that time who the individuals</b>  17 <b>were for -- on the legal team that you would have spoken</b>  18 <b>with or anybody else who you would have spoken to about</b>  19 <b>the permitting requirements for the Osage Wind project?</b>  20 A First of all, it's very difficult that I was  21 going to get to that level of detail about discussing  22 about permits for a specific project. Usually that was  23 directly handled by the team in charge of that project.  24 If the issue was extremely relevant, it maybe would have  25 come to me. In that case, I would have spoken to the</p>
<p style="text-align: right;">Page 19</p> <p>1 MS. FAIN: Sure.  2 <b>Q (BY MS. FAIN) In the time that you were head of</b>  3 <b>Enel Green Power North America, what -- what -- who was on</b>  4 <b>the management team that you would work with, especially</b>  5 <b>related to the Osage Wind project?</b>  6 A Well, it depends very much on the kind of  7 decision that I was supposed to make. The entity is a  8 very big company. It's very complex. So if I had to  9 discuss about procuring wind mills, I was going to talk to  10 the head of procurement in Rome if I had any problem. If  11 we are talking about construction of the wind mill, I had  12 to talk to the head of engineering and construction in  13 Rome because all the different projects around the world  14 reported directly to them.  15 So the project manager sitting on site and  16 making sure that the project was built, the direct line of  17 report is to me and at the same time to the head of  18 engineering and construction in Rome. If I had to discuss  19 the fact that, I don't know, the project was not as  20 economically sustainable as we thought it was, I had to go  21 back to investment committee and discuss with the  22 committee to -- how to manage it.  23 I mean, it's -- there are very many people who I  24 could have talked to about it depending on the subject  25 matter and depending on so -- on how important the matter</p>	<p style="text-align: right;">Page 21</p> <p>1 legal counsel, who at that time was Steve Champagne.  2 <b>Q In your time at EGPNA, when the North America</b>  3 <b>entity that you are over was considering undertaking a new</b>  4 <b>wind project or acquiring an existing wind project or</b>  5 <b>development, what kind of due diligence was typically</b>  6 <b>performed?</b>  7 A The due diligence was performed directly by the  8 business development team together with all the different  9 people from different -- from different departments. So  10 the BD team was in charge of the due diligence, and then  11 legal, engineering, anybody who had -- safety, anybody who  12 had any interest in the project in terms of development  13 would have made his/her part into it.  14 I mean, it was -- it was -- it -- a wind project  15 is an extremely complex project to handle, so you need a  16 lot of different people from -- with different expertise,  17 and you mix them up and you put them in a group, and then  18 they spend days going through all different papers and  19 making sure that everything's okay.  20 I'm not a technician. I am -- I am a general  21 manager, and to be honest with you, I never got into the  22 due diligence of a wind project, and I would not be able  23 to describe to you exactly in detail what the project --  24 what the process would entail.  25 <b>Q Okay. When -- do you recall when you first</b></p>

<p>Page 22</p> <p>1 <b>became aware of the Osage Wind project?</b></p> <p>2 A I'm sure there was a list of many projects that</p> <p>3 were in the course of development by the developer. You</p> <p>4 mentioned TradeWind, so I'm assuming that it was developed</p> <p>5 by Tradewind at the time. But to be honest with you, I</p> <p>6 mean, if you had mentioned a different developer, it could</p> <p>7 have been a different developer.</p> <p>8 And when the project is developed, the project</p> <p>9 goes through -- when it's ready to go, goes through the</p> <p>10 due diligence, and then from the due diligence goes to</p> <p>11 investment committee. And in investment committee, there</p> <p>12 is the people responsible for development of the project,</p> <p>13 in this case, the North American team and the CEO, the CFO</p> <p>14 of Enel Green Power, and then the -- all the direct</p> <p>15 reports, and they analyze the project and they see if it</p> <p>16 meets the proper rate, the level of return that are</p> <p>17 required by the company if it's developed properly.</p> <p>18 Obviously, I mean, it's a presentation of slides. They</p> <p>19 don't go in detail. They trust the people who put</p> <p>20 together the information.</p> <p>21 <b>Q Do you recall or do you have an idea of when</b></p> <p>22 <b>EGPNA first considered acquiring the Osage Wind project?</b></p> <p>23 A No, I have no idea.</p> <p>24 <b>Q When you -- when you first became involved in</b></p> <p>25 <b>any capacity with the Osage Wind project, was this -- was</b></p>	<p>Page 24</p> <p>1 general manager. He used to be the general manager for</p> <p>2 80, 90 percent of the projects built in the United States,</p> <p>3 so I would be surprised if Bill was not part of it. Legal</p> <p>4 side, Steve Champagne. Enel side, Steve Pike. I mean, my</p> <p>5 management team was fully involved on, you know, the</p> <p>6 different projects in the United States, and obviously</p> <p>7 they had to delegate to other members of the team because</p> <p>8 we were growing at the time quite fast. There were many</p> <p>9 projects in our portfolio.</p> <p>10 <b>Q With that team set, what -- is it -- is it</b></p> <p>11 <b>accurate to say they handled day-to-day decisions on the</b></p> <p>12 <b>project?</b></p> <p>13 A Absolutely, yes.</p> <p>14 <b>Q At what point would issues on the project rise</b></p> <p>15 <b>to your level?</b></p> <p>16 A Usually where -- situations where there was the</p> <p>17 potential for not moving forward or there were extra costs</p> <p>18 to take care of. Everything that I would say had an</p> <p>19 impact on the construction of the project more than</p> <p>20 anything else, the economic viability of the project</p> <p>21 itself. We had to -- we had -- if the project was in</p> <p>22 construction, we had to go to the investment committee,</p> <p>23 which means that we were given the rate that we needed to</p> <p>24 make sure that the project was economically viable.</p> <p>25 Anything that had impact, both problems in construction or</p>
<p>Page 23</p> <p>1 <b>this before EGPNA entered a loan agreement with Tradewind</b></p> <p>2 <b>for the project, for the Osage Wind project?</b></p> <p>3 A I have no idea.</p> <p>4 <b>Q Okay. Can you describe the scope of work you</b></p> <p>5 <b>were involved with on the Osage Wind project, generally?</b></p> <p>6 A I mean, no. I mean, I was managing a portfolio</p> <p>7 of projects. So when projects were in development, my</p> <p>8 biggest concern was to put all the team, the whole team</p> <p>9 together and make sure that the job was properly done.</p> <p>10 Everybody had to pitch its own knowledge in making sure</p> <p>11 that the project was valuable.</p> <p>12 Once we were ready to go, I mean -- and, again,</p> <p>13 I wasn't -- I do not have the kind of know-how to get into</p> <p>14 all the different engineer and legal details. I trust my</p> <p>15 team. I mean, it's a very -- it was, still is, a very</p> <p>16 senior team with a humongous experience in this sector.</p> <p>17 At that time, Mike Storch was -- together with David Post,</p> <p>18 they were the head developers on Enel Green Power North</p> <p>19 America side, and they're people with decades of</p> <p>20 experience in this business.</p> <p>21 <b>Q Do you -- so if I heard right, on the Osage Wind</b></p> <p>22 <b>project, the people on the team from the EGPNA were you</b></p> <p>23 <b>had Mike Storch and Dave Post. Do you recall any of the</b></p> <p>24 <b>other team members for the Osage Wind project?</b></p> <p>25 A From what I can remember, it was Bill Price as</p>	<p>Page 25</p> <p>1 an economics impact on the project, I would have been</p> <p>2 involved.</p> <p>3 <b>Q The same team that you mentioned, were they</b></p> <p>4 <b>employed by Enel Green Power North America?</b></p> <p>5 A I'm assuming so. I mean, honestly, there were</p> <p>6 different entities, but I'm assuming all the people I</p> <p>7 mentioned were employed by Enel Green Power North America</p> <p>8 at the time, yes.</p> <p>9 <b>Q Were they employed by -- were they employees of</b></p> <p>10 <b>any other Enel entities at the same time?</b></p> <p>11 A Not that I remember. I mean, usually SPB's are</p> <p>12 empty boxes, so I would say 100 percent of employees were</p> <p>13 at the Enel Green Power North America level. But during</p> <p>14 those times, we made different, let's call them</p> <p>15 "brownfield" positions. Like for example, the joint</p> <p>16 venture with General Electric. In this case, I cannot</p> <p>17 swear that there were not Enel employees in -- being part</p> <p>18 of the JV, but my assumption's 100 percent of employees</p> <p>19 were Enel North America level.</p> <p>20 <b>Q Okay. Thank you. Was there -- do you recall</b></p> <p>21 <b>any times where you decided to override a decision made by</b></p> <p>22 <b>the team working on the Osage Wind project?</b></p> <p>23 A Regarding no such -- no. Absolutely I have no</p> <p>24 recollection, and to be honest with you, I don't have a</p> <p>25 recollection of me overriding any important decision</p>



<p>1 regarding any other project. I mean, Enel Green Power, by</p> <p>2 definition, is a company structured throughout by teams.</p> <p>3 Being a team member is extremely important, so most of the</p> <p>4 official decisions are made, you know, at the team level.</p> <p>5 <b>Q Okay. And in this -- in the time that you were</b></p> <p>6 <b>CEO of Enel Green Power North America, were you -- would</b></p> <p>7 <b>you have been involved on some of the financing agreements</b></p> <p>8 <b>related to the Osage Wind project?</b></p> <p>9 A No. I, in that case, still were a very strong</p> <p>10 team working with banks. Actually, there was a direct</p> <p>11 line also in that case with the finance department in</p> <p>12 Rome. Usually, there are two parallel paths; on one side</p> <p>13 you develop and build the project, and on the other side,</p> <p>14 as we know, there are very important incentives in the</p> <p>15 United States. In this case, we are talking about the</p> <p>16 so-called "PTC's" and there is a completely different</p> <p>17 parallel path working on financing the project which</p> <p>18 essentially means selling the PTC's to a bank.</p> <p>19 <b>Q Okay. Were you -- were you involved with any</b></p> <p>20 <b>financing agreements in your -- in your role as a board</b></p> <p>21 <b>member of Tradewind?</b></p> <p>22 A Financing agreements for what?</p> <p>23 <b>Q Well, in particular, the Osage Wind project.</b></p> <p>24 <b>Would you have weighed in on any financing agreements on</b></p> <p>25 <b>Tradewind's side?</b></p>	<p>Page 26</p> <p>1 A I'm sure we did, but, I mean, honestly, what we</p> <p>2 discussed about, I have no idea. The way it worked is</p> <p>3 that they brought in -- whenever the board -- and as far</p> <p>4 as I remember, it was, you know, probably three or four</p> <p>5 times a year, they brought a few slides describing, you</p> <p>6 know, the different projects; what they thought was going</p> <p>7 to be the size; what they thought it was going to be, too</p> <p>8 much or enough for -- to be safe to us. It was general</p> <p>9 information. They were taking care of all the development</p> <p>10 activities. They were very involved, and rightfully so.</p> <p>11 I mean, it was their job and they were paid to develop a</p> <p>12 project.</p> <p>13 <b>Q So even though the Tradewind had its own -- you</b></p> <p>14 <b>know, it's own team responsible for day to day, when there</b></p> <p>15 <b>were issues that rose to the level of the board, was there</b></p> <p>16 <b>a majority of Tradewind people on the board, was there --</b></p> <p>17 <b>or a majority of Enel people on the board, or was it</b></p> <p>18 <b>equal?</b></p> <p>19 A I don't remember how many members there were on</p> <p>20 the board, so I cannot tell you, to be honest. I -- we</p> <p>21 were not controlling the company. I don't think that we</p> <p>22 were equal members of the board. But in any case, this</p> <p>23 kind of issues regarding the development of projects were</p> <p>24 not brought to the board. We were not interested in</p> <p>25 understanding how they were developing a single project</p>
<p>Page 27</p> <p>1 A No. I mean, just it would be -- Tradewind was</p> <p>2 an independent company. I mean, we funded part of the</p> <p>3 development, but I would have never gotten involved in</p> <p>4 anything specific regarding the project. They were</p> <p>5 completely independent in developing the project, and when</p> <p>6 it was ready to go, which means it was ready for due</p> <p>7 diligence and ready for construction, they would have</p> <p>8 brought it to us. Again, investment committee, due</p> <p>9 diligence, and then go through the process as I described</p> <p>10 earlier.</p> <p>11 <b>Q So to clarify, when you said they would have</b></p> <p>12 <b>"brought it to us", are you saying they would have brought</b></p> <p>13 <b>it to Enel or they would have brought it to their own</b></p> <p>14 <b>Tradewind board for --</b></p> <p>15 A They would have brought it -- they would have</p> <p>16 brought it to Enel Green Power. Most of the board -- most</p> <p>17 of the -- what the board would have done at the time was</p> <p>18 mostly looking at the financing of this -- of the company,</p> <p>19 making sure that they had funding to keep developing</p> <p>20 projects. Extremely expensive to develop a wind project,</p> <p>21 and you develop many, but only, you know, a few are</p> <p>22 successful, so you need to keep funding development</p> <p>23 activities, and that's what we were discussing about.</p> <p>24 <b>Q So did the Tradewind board, when you were a</b></p> <p>25 <b>member of the board, discuss the Osage Wind project?</b></p>	<p>Page 28</p> <p>1 because it was their responsibility and they were</p> <p>2 compensating -- they were compensated for that.</p> <p>3 So it was their job to initiate the development</p> <p>4 and building the development up to a certain point when</p> <p>5 the project was ready for construction. At that point,</p> <p>6 they would have brought it to our attention. We would</p> <p>7 have started our due diligence, and if the due diligence</p> <p>8 was positive and we believed that the project was at the</p> <p>9 level of maturity where construction could have started,</p> <p>10 then we would have packaged the whole thing and gone to</p> <p>11 the Enel Green Power investment committee for approval.</p> <p>12 Because every project needs funding, and that's the reason</p> <p>13 why investment committee exists, right? I mean, you go to</p> <p>14 the investment committee and ask for funding to build a</p> <p>15 project.</p> <p>16 <b>Q Who would have been on the investment committee</b></p> <p>17 <b>at Enel Green Power?</b></p> <p>18 A As I said, the CEO or the CFO and all the CEO's</p> <p>19 direct reports.</p> <p>20 <b>Q So, and you would have been on -- is it accurate</b></p> <p>21 <b>to say you would have been on the investment committee?</b></p> <p>22 A Yeah. In this case, I mean, if you are talking</p> <p>23 about the North American project, I would have been the</p> <p>24 one bringing the project to the committee, and CEO and CFO</p> <p>25 mostly, but everyone analyzing the project with the detail</p>

<p>Page 30</p> <p>1 that was provided to them, and then the committee would</p> <p>2 have made a decision. I had no -- I mean, I was not</p> <p>3 going -- I could not approve my own project. So in this</p> <p>4 case, I was the one bringing the project to the committee.</p> <p>5 If one of my colleagues from Brazil was going to</p> <p>6 bring a Brazilian project to the committee, I would have</p> <p>7 been the one -- the one giving my opinion regarding a</p> <p>8 specific project. But when you are bringing your own,</p> <p>9 you're just, you know, explaining what the situation is</p> <p>10 and the decision is made by the rest of the committee.</p> <p>11 <b>Q Okay. So were there any -- between Enel and</b></p> <p>12 <b>Tradewind, were there any understandings with regard to</b></p> <p>13 <b>conflicts of interest? Considering that you did serve on</b></p> <p>14 <b>the board of Tradewind and you were head of EGP's North</b></p> <p>15 <b>America operation, were there any terms that would have</b></p> <p>16 <b>protected against conflicts that might come up with</b></p> <p>17 <b>filling two different roles?</b></p> <p>18 MR. McCORMACK: Hold on. Object to the form of</p> <p>19 the question. Vague and ambiguous.</p> <p>20 You can answer the question.</p> <p>21 A Well, I'm not sure I understand the question</p> <p>22 because I don't see any conflict of interest. I mean,</p> <p>23 that's how the wind industry really works in the United</p> <p>24 States. You have hundreds of different developers and</p> <p>25 that's their job. I mean, they develop projects. And</p>	<p>Page 32</p> <p>1 <b>for construction management wherein Osage -- or Enel would</b></p> <p>2 <b>also serve as the construction management team for the</b></p> <p>3 <b>project. Would you have been involved in this?</b></p> <p>4 MR. McCORMACK: Wait. Object. Oh, wait, wait.</p> <p>5 Object to the form of the question. Assumes facts not in</p> <p>6 evidence. Vague and ambiguous.</p> <p>7 But you can answer it.</p> <p>8 A I have no idea. I mean, there were several</p> <p>9 agreements fairly often that we build with the developers</p> <p>10 to help them out. I mean, I don't know if there is one</p> <p>11 here or not. I have no recollection. We're talking about</p> <p>12 something -- I mean, it was seven years ago, almost eight.</p> <p>13 <b>Q (BY MR. McCORMACK) Okay. Let's see. Were</b></p> <p>14 <b>you -- would you have been involved -- and maybe this</b></p> <p>15 <b>would have been on the investment side as well. But</b></p> <p>16 <b>during your time in the North America office, were you</b></p> <p>17 <b>involved with any service agreements related to the Osage</b></p> <p>18 <b>Wind project?</b></p> <p>19 A Again, I have no recollection. But I</p> <p>20 wouldn't -- I wouldn't probably be directly involved with</p> <p>21 this kind of stuff. I mean, there were several agreements</p> <p>22 for all the different projects. Maybe I would have signed</p> <p>23 an agreement as president and CEO, but that doesn't mean I</p> <p>24 had any, you know, idea of the details in that -- in the</p> <p>25 agreement. So I'm not sure exactly what you're referring</p>
<p>Page 31</p> <p>1 they usually make money -- they don't have money to build</p> <p>2 the project, so they need to develop it up to the point</p> <p>3 where it can be constructed, and usually, at that point,</p> <p>4 they sell it to a third party.</p> <p>5 So Tradewind was one of the many developers we</p> <p>6 used in the United States. The fact that we were -- you</p> <p>7 know, we were helping them in finding the money to develop</p> <p>8 a big portfolio, I don't see any conflict, to be honest.</p> <p>9 I mean, it's a very common thing in the industry. You</p> <p>10 have a foot in the door, and you -- more than anything</p> <p>11 else, you provide finance that is needed so that these</p> <p>12 guys can go out and do their job. It's very expensive to</p> <p>13 develop a -- I mean, renewal projects in general, and</p> <p>14 specifically in this case, wind projects in the United</p> <p>15 States.</p> <p>16 <b>Q Were you -- in your time in the North America</b></p> <p>17 <b>position, were you involved with any management agreements</b></p> <p>18 <b>related to the Osage Wind project?</b></p> <p>19 A Management agreement. What do you mean?</p> <p>20 <b>Q So the -- for instance, Enel's, EGP's role as</b></p> <p>21 <b>managing construction of the Osage Wind project.</b></p> <p>22 A Forgive me. I still am not sure I understand</p> <p>23 what you mean.</p> <p>24 <b>Q So prior to Enel purchasing the membership</b></p> <p>25 <b>interest in the Osage Wind project, there was an agreement</b></p>	<p>Page 33</p> <p>1 to.</p> <p>2 <b>Q Do you know who would have likely been involved</b></p> <p>3 <b>on behalf of Enel in that -- in a service agreement?</b></p> <p>4 A If there is an agreement of some sort which</p> <p>5 means that there is a legal binding contract in some form,</p> <p>6 definitely the legal counsel at the time, Steve Champagne,</p> <p>7 or some member of his team.</p> <p>8 <b>Q Did you ever communicate with anyone from</b></p> <p>9 <b>General Electric regarding the Osage Wind project?</b></p> <p>10 A No. The General Electric deal was a package</p> <p>11 deal, and by the time it was closed, I was well gone.</p> <p>12 <b>Q Do you recall when it was closed?</b></p> <p>13 A No.</p> <p>14 <b>Q Did you ever communicate with anyone from</b></p> <p>15 <b>Northwestern Mutual Life Insurance regarding the Osage</b></p> <p>16 <b>Wind project?</b></p> <p>17 A No. I had no direct contact with the banks</p> <p>18 other than for the dinner for celebrating the closing of</p> <p>19 the deal. Other than that, I mean, there were teams of</p> <p>20 both sides super specialized in this kind of financing</p> <p>21 that were taking care of everything.</p> <p>22 <b>Q Do you recall who would have been on the Enel</b></p> <p>23 <b>team for financing?</b></p> <p>24 MR. McCORMACK: I'm sorry. For what time? For</p> <p>25 what issue? Sorry.</p>

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1 MS. FAIN: Still the time frame in which  
2 Mr. Venturini was over the North America operations.  
3 MR. McCORMACK: Okay. And involved in what  
4 subject matter?  
5 MS. FAIN: We're talking about the financing.  
6 A The answer would have been the CFO. To be  
7 honest, I'm -- well, I changed so many times, I'm not even  
8 sure who it would have been. But on the finances -- on  
9 the financing side, it was and still is a brilliant guy  
10 called Marc Rizzo, and Marc was the guy in charge of all  
11 the funding, actually, still is in charge of all the  
12 funding for Enel Green Power North America today, which is  
13 a much, much, much bigger company.  
14 Q (BY MS. FAIN) Okay. So when you were over the  
15 North America operation, do you have -- do you recall just  
16 kind of a general number of how many other projects you  
17 were responsible for in some capacity during that time?  
18 A I'm not exactly sure what you're referring to  
19 because there are different phases for the different  
20 projects. So you're talking about development, you're  
21 talking construction, you're talking about maintenance,  
22 you're talking about selling the projects, you're talking  
23 about buying the projects. The business is -- the value  
24 chain within the business is quite broad.  
25 Q I think in relation to projects that were also

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1 being -- in the process of being developed at the same  
2 time as the Osage Wind project.  
3 A I cannot tell you how many, but the pipeline of  
4 projects was a long one because we -- we operate -- we  
5 were one -- we were, still are one of the very few  
6 operators in North America building solar, wind, hydro,  
7 and geothermal projects. So we had -- we had a long  
8 pipeline of all the different technologies. You know, I  
9 can't tell you how many.  
10 Tradewind was not developing solar at the time,  
11 actually, so we had relationship with other players.  
12 Geothermal was mostly done in-house. Either is very  
13 complicated, and it takes decades to develop a project.  
14 So there were a few ones that we were handling in-house,  
15 but mostly it's you go out and you buy projects from third  
16 parties. So it's very difficult for me to answer your  
17 question.  
18 Q I think -- okay. Given the -- given the broad  
19 range of work that the North America operation did at the  
20 time that you were over it, do you recall if any of those  
21 projects besides Osage Wind involved Indian Trust  
22 property?  
23 A No, I don't recall if we had any other project  
24 on -- in such a situation. But I cannot exclude it, to be  
25 honest.

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1 Q Okay.  
2 A We definitely have projects on federal ground  
3 because federal government is such a big land owner in the  
4 United States, but every project has a completely  
5 different situation from the others. That's why you need  
6 developers. That's why it's so expensive, because you're  
7 dealing with hundreds, sometimes thousands of land owners.  
8 Q In the projects that -- where the property has  
9 some connection to the federal government, whether it's  
10 public lands or tribal lands, are -- is there -- does Enel  
11 have a special team for those specific matters or --  
12 A There is no special team. I mean, at the end,  
13 to make this business work, you need to be clean and  
14 efficient. There was a BD team. At the time, I don't  
15 remember if they were organized by technology or  
16 geographical area, but then at the end, they were doing  
17 most of the work. Remember, a lot of this work is done by  
18 external developers, and they know exactly when a project  
19 is ready to be -- to be analyzed, to be analyzed by us.  
20 They know when a project is mature enough to go to  
21 investment community. I mean, everybody knows. It's  
22 industry.  
23 Q And I apologize if this question is repetitive,  
24 but when you say you have the developer and then, you  
25 know, they're getting it into a package that will then be

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1 analyzed by Enel, what does that analysis look like?  
2 A It's the due diligence that you were referring  
3 to before.  
4 Q Okay. And are there -- what are risks that you  
5 would typically review during the analysis or look for  
6 during an analysis?  
7 A I am not the person in charge. I was not in  
8 charge of the due diligence. But I'm assuming that they  
9 were going through every conceivable risk for every  
10 project, from environmental risk, financial risk,  
11 procurement risk, legal risk. I mean, usually the first  
12 thing that was analyzed, the biggest one, wind risk. If  
13 you have wind in a specific area, and can you use it to  
14 generate. And that risk, very often, a lot of developers,  
15 they were developing projects for years, and coming was  
16 fantastic wind projections, but then we reanalyzed and  
17 were not very convinced that they were real. So, I mean,  
18 there is tons of stuff that needs to go -- that needs to  
19 be analyzed, but I wasn't in charge of -- never have been  
20 really in charge of that level of detail, so I don't know.  
21 Q So would that -- would that type of analysis  
22 be -- show up in a report anywhere? Was it normally just  
23 discussed during a meeting? What is the genesis of that  
24 analysis? How does it --  
25 A Usually -- forgive me if I interrupt you. I

<p>Page 38</p> <p>1 shouldn't do that. Usually, it's through the due 2 diligence report. The due diligence report is then 3 packaged in those 10, 15 slides that I was describing to 4 you that go to the investment company. 5 <b>Q Okay. Thank you. Have you --</b> 6 A I'm sure there's more reports, but I don't know. 7 I have no idea. 8 <b>Q Have you ever worked on a project where a</b> 9 <b>governmental authority has notified the project proponent</b> 10 <b>that a license or permit was required?</b> 11 A (Inaudible.) 12 <b>Q I'm sorry. What? Did you --</b> 13 A No. I don't remember. 14 MR. McCORMACK: He said -- he said, "Not that I 15 recall." 16 MS. FAIN: Thank you. 17 <b>Q (BY MS. FAIN) Have you -- do you know of any</b> 18 <b>projects that Enel has worked on where the project</b> 19 <b>proponent has refused to seek or obtain a license or</b> 20 <b>permit that -- after they've been notified one is</b> 21 <b>necessary?</b> 22 A It would not have come to my desk because it 23 would have been stopped by the BD team if that was the 24 case. I wouldn't know because I -- it's -- again, all the 25 development process was handled directly by a specific</p> <p>Page 39</p> <p>1 team that was using all the different team members within 2 the company to try to bring a project to the level of 3 maturity that you need to construct it. But, I mean, I 4 wouldn't have gone into that level of detail. I mean, I 5 would have done business reviews with my BD team and they 6 would have described what was in the pipeline, but I 7 sincerely doubt that they would have told me that that 8 specific project had that specific legal issue. It 9 wasn't -- it wasn't relevant to me. I was managing the 10 portfolio on this business project. 11 <b>Q Okay. That's helpful. And when you -- when you</b> 12 <b>represent the "BD team", for the Osage Wind project, is</b> 13 <b>that the individuals you mentioned earlier, Mike Storch,</b> 14 <b>Bill Price, Steve Champagne, or were there others on the</b> 15 <b>team that --</b> 16 A There was also another guy. His name is David 17 Post. David Post, who is Spanish, was the head of the 18 business development team. 19 <b>Q Okay. Let's see. Is it -- to your knowledge,</b> 20 <b>is it typically the -- the -- Enel's responsibility to</b> 21 <b>determine what laws and regulations applied to the</b> 22 <b>projects they're interested in?</b> 23 A Absolutely. I mean, there is -- we are very 24 extremely careful with the local laws all over the world. 25 We cannot risk to build a project and then find out that</p>	<p>Page 40</p> <p>1 we were not, you know, supposed to. As we -- we -- it's a 2 big investment. There are tons of lawyers making sure 3 that we do the proper thing. 4 <b>Q Okay. I think I'd like to go into some</b> 5 <b>questions about industry standards and terms that we'll be</b> 6 <b>discussing a little bit further. Can you describe -- and</b> 7 <b>we --</b> 8 MR. McCORMACK: Counsel, if you're going to 9 take -- if you're going to move subject matters, I 10 wouldn't mind having an opportunity to use the restroom, 11 quite frankly. So can we take our first morning break? 12 MS. FAIN: Absolutely. Do you want to -- do you 13 want five minutes? Ten minutes? What -- 14 MR. McCORMACK: Why don't we take ten minutes. 15 MS. FAIN: Okay. Great. 16 THE VIDEOGRAPHER: We're off the record at 17 8:11 a.m. 18 (Break taken.) 19 THE VIDEOGRAPHER: We are back on record at 20 8:23 a.m. 21 <b>Q (BY MS. FAIN) Okay. We'll jump into this next</b> 22 <b>section about industry standards. And so, first, can you</b> 23 <b>tell us a little bit about or describe what a membership</b> 24 <b>interest purchase agreement is.</b> 25 A In general?</p> <p>Page 41</p> <p>1 <b>Q Yes.</b> 2 A I'm assuming you're referring to a contract 3 between two parties where a company or a subject buys 4 quotas of another company or entity. 5 <b>Q Generally, who are the parties to this type of</b> 6 <b>agreement for a wind project?</b> 7 A I'm not sure what you're referring to. It 8 depends what the agreement is about. What are you 9 referring to? The SPB that has the project? I'm not 10 sure. 11 <b>Q Sure. We'll first look at or talk about the</b> 12 <b>MIPA, the membership interest purchase agreement between</b> 13 <b>Tradewind and the Osage Wind project -- or Tradewind and</b> 14 <b>Wind Capital. During this time when Tradewind entered a</b> 15 <b>membership interest purchase agreement with Wind Capital,</b> 16 <b>were you -- do you recall if you were on the board for</b> 17 <b>Tradewind?</b> 18 A No. And I don't know what Wind Capital is. 19 <b>Q Okay. So in this case, there was a membership</b> 20 <b>interest purchase agreement entered on August 22, 2013</b> 21 <b>between Tradewind and Wind Capital Group where EGPNA was</b> 22 <b>the guarantor. Does this -- does this agreement sound</b> 23 <b>familiar to you?</b> 24 MR. McCORMACK: Hold on. Just object to the 25 form of the question. Assumes facts not in evidence.</p>
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<p>Page 42</p> <p>1 But you can answer the question.</p> <p>2 A No, I don't recall.</p> <p>3 Q (BY MS. FAIN) Okay. I'll go ahead and have</p> <p>4 Julie from our team show you a document that is marked</p> <p>5 Exhibit Number 78. It's the membership interest purchase</p> <p>6 agreement that I just mentioned between Tradewind Energy</p> <p>7 and Wind Capital Group, and it includes the guarantee</p> <p>8 agreement with EGPNA serving as the guarantor.</p> <p>9 Have you seen this document?</p> <p>10 MR. McCORMACK: Wait. Object to the form of the</p> <p>11 question. Assumes facts not in evidence.</p> <p>12 But you can answer the question.</p> <p>13 A I don't know.</p> <p>14 Q (BY MS. FAIN) Based off the page that we have on</p> <p>15 the screen, does it -- it looks like Tradewind and Wind</p> <p>16 Capital Group are the parties to the agreement. Would you</p> <p>17 say that's accurate?</p> <p>18 A What I read, yes, Tradewind Energy and Wind</p> <p>19 Capital Group.</p> <p>20 Q And in this case, it indicates that Tradewind</p> <p>21 was the purchaser and Wind Capital was the seller. Is</p> <p>22 that accurate?</p> <p>23 A From what I can read from this document, yes.</p> <p>24 Q Okay. And below that initial introduction, it</p> <p>25 goes on to say that the seller, in this case, Wind Capital</p>	<p>Page 44</p> <p>1 A It was not typical, but it could have happened.</p> <p>2 Q Okay. In the same exhibit at -- it's page 46 or</p> <p>3 Bates stamp 21293, the agreement states that -- the</p> <p>4 guarantee agreement states that EGPNA will, "guarantee the</p> <p>5 duties, performance, and obligations of the buyer,</p> <p>6 Tradewind, under the membership interest purchase</p> <p>7 agreement."</p> <p>8 Do you see where it says this?</p> <p>9 A Yes.</p> <p>10 Q Okay. And do you know what Tradewind's duties</p> <p>11 would have been in this agreement?</p> <p>12 A No. I said no.</p> <p>13 Q Oh, okay. Sorry. Do you know what the purpose</p> <p>14 of the guarantee agreement would be in this instance, why</p> <p>15 EGP would agree to be the guarantor?</p> <p>16 A No. It would be just assumptions.</p> <p>17 Q Okay. Okay. On -- on -- in this same</p> <p>18 agreement, we have the Bates stamped page 21251. This</p> <p>19 agreement also defines the term "governmental authority".</p> <p>20 And I'm going to read part of this defined term for you</p> <p>21 once we get there so you can see it as well.</p> <p>22 Okay. So the part I'm going to read starts</p> <p>23 with, "For the avoidance of doubt, no Native American</p> <p>24 tribe, nation, entity, body, organization, governmental or</p> <p>25 other authority, or any agency, division, ministry,</p>
<p>Page 43</p> <p>1 Group, owns 100 percent of the membership interest in</p> <p>2 Osage Wind, LLC, and the purchaser, in this case,</p> <p>3 Tradewind, desires to purchase from the seller the</p> <p>4 membership interest in Osage Wind, LLC.</p> <p>5 In August -- at the time of this agreement,</p> <p>6 August 22, 2013, would you have been on Tradewind's board?</p> <p>7 A (Inaudible.)</p> <p>8 Q Okay.</p> <p>9 THE REPORTER: Can you repeat that answer,</p> <p>10 please.</p> <p>11 A I don't know.</p> <p>12 THE REPORTER: Okay. Thank you.</p> <p>13 Q (BY MS. FAIN) So later on in this agreement, in</p> <p>14 Section 1.1, there is a definition for, I believe it's</p> <p>15 EGP, and in this case, "EGP" means Enel Green Power North</p> <p>16 America, Inc. Does that look accurate?</p> <p>17 A From what I read, yes.</p> <p>18 Q Okay. And "EGP guarantee" means, "The guarantee</p> <p>19 to be delivered by EGP at closing in the form of Exhibit A</p> <p>20 attached hereto."</p> <p>21 To your knowledge, the -- did EGP deliver the</p> <p>22 guarantee at the closing of this transaction?</p> <p>23 A I'm sorry. I don't -- I -- I don't know.</p> <p>24 Q Okay. Is it typical for EGP to serve as</p> <p>25 guarantor for Tradewind on wind projects?</p>	<p>Page 45</p> <p>1 instrumentality, or authority thereof shall be considered</p> <p>2 a governmental authority for any purpose hereunder."</p> <p>3 What is your understanding of why, under this</p> <p>4 agreement, no Native American tribe was to be considered a</p> <p>5 governmental authority?</p> <p>6 A I have no idea.</p> <p>7 Q And did EGPNA ever undertake an independent</p> <p>8 inquiry and determination as to the rights of a Native</p> <p>9 American tribe, or more specifically, the Osage Nation in</p> <p>10 relation to the Osage Wind project?</p> <p>11 A I don't know. I'm assuming that maybe the BD</p> <p>12 unit would have done it, but I don't know.</p> <p>13 Q Okay. And they -- if it was the BD unit,</p> <p>14 would -- do they fall under your direction?</p> <p>15 A Yeah.</p> <p>16 Q Okay. And are -- were you ever made aware of</p> <p>17 any conclusions that that unit reached regarding --</p> <p>18 regarding the Osage Nation's rights in relation to the</p> <p>19 Osage Wind project?</p> <p>20 A No, I don't recall.</p> <p>21 Q Okay. And let's see. As a -- as a board member</p> <p>22 of Tradewind, did you ever undertake any inquiry to</p> <p>23 ascertain whether it was in Tradewind's interest to agree</p> <p>24 it exclude Native American tribes from the definition of</p> <p>25 governmental authority?</p>



<p>Page 46</p> <p>1 A Not that I recall.</p> <p>2 Q Okay. If no one undertook this inquiry, do you</p> <p>3 recall what representations were made to EGPNA about the</p> <p>4 rights of a Native American tribe in relation to the Osage</p> <p>5 Wind project?</p> <p>6 A It was not my responsibility to get into that</p> <p>7 level of detail as it were.</p> <p>8 Q Okay. Would -- is this something -- you</p> <p>9 mentioned the B -- the BD team. In your role as an</p> <p>10 executive of EGPNA or as a board member of Tradewind,</p> <p>11 would you ever review this type of agreement, a membership</p> <p>12 interest purchase agreement?</p> <p>13 A No.</p> <p>14 Q Okay. Okay. Then in the same agreement, we're</p> <p>15 going to go down to Bates stamped page 21257, and it's the</p> <p>16 section is "delay and interim payment," which states that</p> <p>17 Tradewind may, "delay payment of an interim payment until</p> <p>18 after all pending or threatened claims, litigation,</p> <p>19 arbitration, administrative proceedings, or any dispute</p> <p>20 initiated, brought, or asserted by the United States as</p> <p>21 trustee for the Osage Nation or by the Osage Nation have</p> <p>22 been finally resolved including all appeals and reviews</p> <p>23 thereof."</p> <p>24 Do you see where it says that?</p> <p>25 A Yeah, in the last part of the paragraph.</p>	<p>Page 47</p> <p>1 stuff, and then probably a lot of external advice.</p> <p>2 Q Okay. And we're going to stay on this same</p> <p>3 document and now go to Bates stamp page 21258. And this</p> <p>4 is Section 2.4H. It says, "The Board of Directors of</p> <p>5 Purchaser EGP shall have approved this transaction in all</p> <p>6 respects, it being understood that such approval is in</p> <p>7 absolute discretion of such Board of Directors without any</p> <p>8 duty of good faith."</p> <p>9 To your -- do you see where it says this?</p> <p>10 A Yeah.</p> <p>11 Q To your knowledge, who would have been involved</p> <p>12 in advising the Board of Directors of EGPNA in relation to</p> <p>13 this agreement?</p> <p>14 A It would have been the legal counsel at the</p> <p>15 time.</p> <p>16 Q Okay. And are you aware of the advice that was</p> <p>17 given to the -- to EGP's Board of Directors?</p> <p>18 A No, not that I recall.</p> <p>19 Q Okay. And at this time, would you have been on</p> <p>20 EGP's Board, Board of Directors?</p> <p>21 A I'm assuming so.</p> <p>22 Q Okay. Do you -- can you tell us around this</p> <p>23 time how many members sat on EGP's Board of Directors?</p> <p>24 A No, I cannot remember.</p> <p>25 Q Okay. And did -- let's see. We'll go ahead and</p>
<p>Page 47</p> <p>1 Q Yes. That's correct.</p> <p>2 A Uh-huh.</p> <p>3 Q What was your understanding or do you have an</p> <p>4 understanding of why this would have been included in an</p> <p>5 agreement between Tradewind when it purchased the Osage</p> <p>6 Wind project?</p> <p>7 A I have no understanding.</p> <p>8 Q Okay. And do you -- do you recall if there</p> <p>9 was -- if Tradewind had any expectation in 2013 that the</p> <p>10 United States, as trustee for the Osage Nation, would</p> <p>11 bring a lawsuit related to the Osage Wind project?</p> <p>12 A I don't know.</p> <p>13 Q Okay. Is it safe to say or accurate to say that</p> <p>14 the board, the Tradewind board, did not discuss this as a</p> <p>15 possibility in 2013?</p> <p>16 A I cannot exclude it. I cannot even tell you if</p> <p>17 I was in that board meeting or not.</p> <p>18 Q Okay. And do you have any idea of when an</p> <p>19 agreement such as this -- what entities are involved in</p> <p>20 drafting the agreement?</p> <p>21 A "Entities", meaning what exactly?</p> <p>22 Q What -- who drafted -- who would typically be</p> <p>23 responsible for drafting this type of agreement?</p> <p>24 A Lawyers. We -- our legal counsel would have</p> <p>25 been involved, assuming that this is Enel Green Power</p>	<p>Page 48</p> <p>1 move to Bates stamped page 21268, and it's Article 3 of</p> <p>2 this agreement. And specifically, I believe it's Section</p> <p>3 3.1, "Representations and warranties of Seller Wind</p> <p>4 Capital Group," and then under 3.1Y, "Project approval's</p> <p>5 compliance with law". Do you see that section?</p> <p>6 A Yes.</p> <p>7 Q Okay. It says that -- bullet point -- at bullet</p> <p>8 point 2, the second paragraph reads in part, "Neither</p> <p>9 seller nor the company has received any notice, formal or</p> <p>10 informal, of any material issues raised by any</p> <p>11 governmental authority with respect to the project,</p> <p>12 including those related to bird migration and other</p> <p>13 environmental matters, which such issues the seller or</p> <p>14 company expects could have a material adverse effect on</p> <p>15 the future development or construction of the project."</p> <p>16 Do you know what would be meant by "material</p> <p>17 adverse effect" in relation to the future development of</p> <p>18 or construction of the Osage Wind project?</p> <p>19 A I would say -- I mean, I would say it's</p> <p>20 something that has the effect of stopping development.</p> <p>21 That's an assumption.</p> <p>22 Q Would -- is -- do you think that this could be</p> <p>23 the reason why Native American tribes were exempted from</p> <p>24 the definition of governmental authority?</p> <p>25 MR. McCORMACK: Object to the form of the</p>



<p>Page 50</p> <p>1 question. Calls for speculation. Also involves a legal 2 conclusion. 3 But you can answer. 4 A I have no idea. 5 <b>Q (BY MS. FAIN) Why do you think that Native 6 American tribes were excluded from the definition of 7 applicable permits in connection with the Osage Wind Farm 8 project before Modrall Sperling concluded their analysis 9 concerning whether a permit from the Osage Nation would be 10 required?</b> 11 MR. McCORMACK: Wait. Object to the form of the 12 question. Assumes facts not in evidence. Asked and 13 answered. 14 But if you can answer the question -- 15 A I cannot answer the question. I have no -- I 16 have no idea. I was not at that level of detail. I'm 17 sorry. 18 <b>Q (BY MS. FAIN) And just to -- to revisit the 19 people involved, this -- is it your understanding that 20 this -- these provisions would have been reviewed by 21 Enel's BD team that you have referenced?</b> 22 A I would expect the business development team in 23 the due diligence. 24 <b>Q Okay. All right. Well, I will move on to a 25 different membership interest purchase agreement, but this</b></p>	<p>Page 52</p> <p>1 <b>Q Okay. And let's see. So is this an agreement 2 that you typically would have signed off on?</b> 3 A Possibly. 4 <b>Q Okay. Are -- is it -- is it --</b> 5 MS. FAIN: Julie, if you could, go ahead and 6 scroll down to Bates stamp number 021156. 7 <b>Q (BY MS. FAIN) She's there. Let's see. And on 8 this page it says chief executive officer of Enel Kansas, 9 LLC. Do you recognize the signature on the by line?</b> 10 A Yeah. It looks my sign there. 11 <b>Q And what about the -- is that the same signature 12 as the by line for Enel Green Power North America?</b> 13 A Yeah. 14 <b>Q And does this -- do you have any recollection 15 now of Enel Kansas, LLC?</b> 16 A No. 17 <b>Q Okay.</b> 18 A I think that this was signed digitally from what 19 I can tell, so I could have been anywhere around the 20 world. 21 <b>Q Okay. So it's not -- is this something you 22 would have read before signing?</b> 23 A Oh, I would probably have received some sign 24 of -- some sort of note of what the whole thing was about, 25 and then I would have signed it.</p>
<p>Page 51</p> <p>1 <b>one is different in that it is between Tradewind Energy 2 and Enel Kansas, and it was entered on September 17, 2014. 3 So we'll go ahead. This document, this agreement was 4 previously introduced, and it's marked as Exhibit 79. So 5 we'll have -- Julie will help us get that document pulled 6 up.</b> 7 <b>And it says -- so as you can see on the page 8 that is on the screen, it says the agreement is between 9 Enel Kansas, LLC, and Tradewind Energy, Inc. Do you 10 recall this agreement?</b> 11 A No. It's dated September 17, 2014. That was 12 already the time when I was CEO of Enel. So, I mean, 13 if -- I mean, if before that I was not in the level of 14 detail, at the time, I was definitely very far from this 15 level of detail. 16 <b>Q Who was -- who was over the North American 17 operation at that -- as of September 17, 2014?</b> 18 A As far as I remember - I could be wrong - 19 formally, it was still myself because my replacement had 20 not been appointed yet formally. Informally -- I mean, 21 not informally. In practice, the senior team in the 22 United States was managing all the day-to-day business 23 activities. 24 <b>Q Okay.</b> 25 A So it was the same people I mentioned before.</p>	<p>Page 53</p> <p>1 <b>Q And who would have provided you with that note 2 about what this was?</b> 3 A The legal counsel together with the management 4 team. 5 <b>Q Okay. At this time, how would you -- you've 6 indicated that you're not familiar with Enel Kansas. Is 7 that correct?</b> 8 A I do not -- I didn't -- I didn't remember the 9 name. So I don't know what "familiar" means for you. I 10 am -- from what I see -- from what I can tell from this 11 document, it's probably an SPB that was dedicated to a 12 specific project. 13 <b>Q Can you -- in that respect, what you just 14 mentioned, how -- what does that relationship look like 15 between Enel Green Power North America and an entity like 16 Enel Kansas? What is the -- what is the relationship?</b> 17 A Usually, Enel Green Power North America 18 controlled different SPB's, which are the companies that 19 then owned the project. 20 <b>Q Okay. So in this case, Enel Green Power, is it 21 accurate to say it controlled -- it would have controlled 22 Enel Kansas at the time of this agreement?</b> 23 MR. McCORMACK: Wait, wait, wait, wait. Object 24 to the form of the question. Calls for a legal 25 conclusion. Assumes facts not in evidence.</p>

<p>Page 54</p> <p>1 You can answer.</p> <p>2 A I have no idea. I mean, it could have been</p> <p>3 controlled partially, in total; it depends very much on</p> <p>4 the financials. Usually, it depends on the financial</p> <p>5 structure that you are trying to put together. But</p> <p>6 probably, yes. Probably it was controlling the company.</p> <p>7 <b>Q (BY MS. FAIN) For -- oh, sorry. Go ahead.</b></p> <p>8 A No, I don't know. I cannot tell you. I have no</p> <p>9 idea.</p> <p>10 <b>Q All right. For an entity like Enel Kansas,</b></p> <p>11 <b>under the SPB structure, are there ever employees? Or let</b></p> <p>12 <b>me reframe that.</b></p> <p>13 <b>Would Enel Kansas have employed anybody</b></p> <p>14 <b>separately from Enel Green Power?</b></p> <p>15 A I'm not sure I understand the question.</p> <p>16 <b>Q So you -- in this -- on this page, it reflects</b></p> <p>17 <b>that you signed as the CEO of Enel Kansas and CEO as Enel</b></p> <p>18 <b>Green Power North America.</b></p> <p>19 A Uh-huh.</p> <p>20 <b>Q The people working on the Enel Kansas side, were</b></p> <p>21 <b>they all Enel Green Power employees or were they</b></p> <p>22 <b>specifically employed by Enel Kansas?</b></p> <p>23 A It's -- again, I'm going to repeat the same</p> <p>24 answer I gave you before. Most of the cases I would say</p> <p>25 close to 100 percent all the employees were employees of</p>	<p>Page 55</p> <p>1 probably two or three internal lawyers, and then they were</p> <p>2 working with a lot of external advisers.</p> <p>3 <b>Q Are the -- are the external advisers, are they</b></p> <p>4 <b>private firms or outside counsel?</b></p> <p>5 A Private firms. Outside counsels, yes.</p> <p>6 <b>Q Okay. And do you recall who the outside counsel</b></p> <p>7 <b>was at this time?</b></p> <p>8 A No.</p> <p>9 <b>Q Okay. Were you ever in communication with the</b></p> <p>10 <b>attorneys that were involved in drafting this?</b></p> <p>11 A Internal or external?</p> <p>12 <b>Q Both. Either. Well, we'll start with internal.</b></p> <p>13 A I was, I think -- I was in contact with them.</p> <p>14 They were my legal team, but did we ever talk specifically</p> <p>15 about this agreement, I have no idea.</p> <p>16 <b>Q How often would you -- do you -- would you say</b></p> <p>17 <b>or estimate that you would speak to your legal counsel</b></p> <p>18 <b>about the Osage Wind project?</b></p> <p>19 MR. McCORMACK: Just for clarification, I just</p> <p>20 want to be sure that we don't get into the substance of</p> <p>21 those conversations because that would be attorney-client</p> <p>22 privilege. So she's only asking the question of how often</p> <p>23 do you speak, and that's the question you should answer</p> <p>24 without risk of giving away privileged information.</p> <p>25 THE WITNESS: Thank you.</p>
<p>Page 55</p> <p>1 Enel Green Power North America. If there were exceptions,</p> <p>2 they were extraordinary exceptions. And, again, I don't</p> <p>3 recall even one.</p> <p>4 What I was thinking about, as I said before, was</p> <p>5 the JV with General Electric. I'm not sure if some</p> <p>6 employees were borrowed by the JV from Enel Green Power</p> <p>7 North America, to be honest. I cannot tell you. Usually,</p> <p>8 100 percent of the employees are Enel Green Power North</p> <p>9 America. The SPB's are empty boxes.</p> <p>10 <b>Q Okay. Thank you. And so is it -- when it came</b></p> <p>11 <b>to drafting this agreement, who would you say would have</b></p> <p>12 <b>been involved on the Enel side in drafting this agreement?</b></p> <p>13 A As I said, these kind of agreements were usually</p> <p>14 managed by our BD department together with the support of</p> <p>15 the legal counsel.</p> <p>16 <b>Q Okay. And do you know if, as far as the legal</b></p> <p>17 <b>counsel goes, would they have been involved in</b></p> <p>18 <b>representing or advising any other entities besides EGP</b></p> <p>19 <b>concerning the Osage Wind project?</b></p> <p>20 A I'm not sure I understand your question.</p> <p>21 <b>Q Were there -- were there any attorneys involved</b></p> <p>22 <b>in drafting on EGP's side that were also responsible for</b></p> <p>23 <b>giving advice to any other entities on this project?</b></p> <p>24 A Again, I'm sorry, but I don't understand. There</p> <p>25 is one legal counsel, and the legal counsel had, I think,</p>	<p>Page 57</p> <p>1 A What's the date of this agreement again?</p> <p>2 <b>Q (BY MS. FAIN) This agreement, I believe, is</b></p> <p>3 <b>September 17, 2014.</b></p> <p>4 A I would say extremely rarely.</p> <p>5 <b>Q Extremely rarely?</b></p> <p>6 A I don't know. Maybe once a month.</p> <p>7 <b>Q Okay.</b></p> <p>8 A I was BD on my other job. Again, I was not</p> <p>9 involved in the day-to-day activities of Enel Green Power</p> <p>10 North America at the time. I was signing these documents</p> <p>11 because formally I was still the chief executive officer,</p> <p>12 but the team had all the experience, capabilities, and</p> <p>13 know-how to keep Enel going without having my guidance on</p> <p>14 a daily basis.</p> <p>15 <b>Q Did you ever direct anyone to communicate with</b></p> <p>16 <b>the other attorneys on this case, or would it -- or,</b></p> <p>17 <b>rather, anybody in addition to Steve?</b></p> <p>18 A What do you mean?</p> <p>19 MR. McCORMACK: Yeah. Sorry. Go ahead.</p> <p>20 <b>Q (BY MS. FAIN) Was there -- did you -- did you</b></p> <p>21 <b>ever direct others on the Osage Wind project to</b></p> <p>22 <b>communicate with any of the attorneys involved with</b></p> <p>23 <b>drafting this agreement besides Steve Champagne?</b></p> <p>24 A Are you talking about external counsel?</p> <p>25 <b>Q Including external counsel as well.</b></p>

<p>Page 58</p> <p>1 A I'm not sure I understand your question. Steve 2 Champagne was the legal counsel, so I would have talked to 3 him. Why would I have gone to external counsel and talked 4 to them? It doesn't make -- I didn't -- I would have 5 barely found the time to talk to Steve. There was 6 absolutely no reason for me to go out -- to go and talk to 7 the rest of the legal team. I don't exclude it, but, I 8 mean, I am very -- I have no idea why I would have done 9 that.</p> <p>10 Q So if that's the case, is it accurate to say 11 that communication with external counsel would have been 12 through Steve Champagne?</p> <p>13 A Absolutely.</p> <p>14 Q Okay. And would it have been Steve Champagne 15 who gave directions to external counsel?</p> <p>16 MR. McCORMACK: Counsel, are you referring to 17 this document or are you now referring to larger issues 18 beyond this document?</p> <p>19 MS. FAIN: Well, I think specific to this 20 document, and then we will eventually turn to some of the 21 larger issues.</p> <p>22 MR. McCORMACK: Okay. Thank you for that 23 clarification.</p> <p>24 A What's the question again?</p> <p>25 Q (BY MS. FAIN) If there were matters that related</p>	<p>Page 60</p> <p>1 Q We will -- oh, sorry. Go ahead.</p> <p>2 MR. McCORMACK: Counsel, just for my 3 clarification, is this still the guarantee agreement or 4 the other agreement? It doesn't show on my screen.</p> <p>5 MS. FAIN: This is the membership interest 6 purchase agreement.</p> <p>7 MR. McCORMACK: Oh, okay.</p> <p>8 MS. FAIN: Between Enel Kansas and Tradewind.</p> <p>9 MR. McCORMACK: All right. Thank you.</p> <p>10 Q (BY MS. FAIN) Okay. Well, we'll move on to 11 another provision that hopefully will describe some of 12 that, some of the sections that it referenced. So let's 13 see. We'll go Bates stamp 21150, and one of the sections 14 is 8.4 B, and 8.4 is one of the sections that was 15 mentioned above. And it's buyer's indemnity, and this 16 provision reads -- or do you see where it says "buyer's 17 indemnity"?</p> <p>18 A Uh-huh.</p> <p>19 Q And Subsection B, specifically?</p> <p>20 A Yeah.</p> <p>21 Q Okay. It says, "The buyer and EGPNA hereby 22 agree to indemnify and hold harmless seller against and in 23 respect to any act or omissions of buyer, its agents, 24 representatives, employees, or affiliated entities, 25 including without limitation any and all activities</p>
<p>Page 59</p> <p>1 to this agreement that external counsel was working on, 2 would they have received their direction for work to be 3 completed from Steve Champagne?</p> <p>4 A I'm assuming so, yeah.</p> <p>5 Q Okay. Okay. We'll move to the -- another 6 portion of this agreement, Section 1.2, which is Bates 7 stamp 021125. Okay. And do you see that section?</p> <p>8 A Section 1.2?</p> <p>9 Q Yes. That's right. Okay. It says that -- in 10 part, the provision states "EGPNA will be jointly and 11 separately liable to Tradewind for the full and timely 12 payment and performance of Enel Kansas' obligations 13 pursuant to Sections 1.1, 3.9, and 8.4, hereunder EGPNA's 14 obligations, and agrees to pay the amounts due thereunder 15 and/or perform EGPNA's obligations within ten business 16 days after the date of the written notice from Tradewind 17 to EGPNA that such obligations were not paid and/or 18 performed when due."</p> <p>19 Is this consistent with your understanding of 20 this agreement?</p> <p>21 A That's impossible to answer. First of all, I 22 don't know what Sections 1.1, 3.9, 8.4 are about, so -- so 23 I don't know what we're reading.</p> <p>24 Q Okay.</p> <p>25 A It's --</p>	<p>Page 61</p> <p>1 related to the design, construction, and operation of the 2 project, whether arising before or after the closing, 3 except those, one, caused by the actions or failures to 4 act by seller at any time, or, two, caused by the actions 5 or failures to act by Osage before the closing, provided 6 that indemnification is agreed to hereunder for those acts 7 or failures to act and are taken at the written direction 8 of buyer or its affiliate."</p> <p>9 What is your understanding for why EGPNA, not 10 just Enel Kansas, would have agreed to indemnify 11 Tradewind?</p> <p>12 A I'm not sure I understand what you're trying to 13 get to. I'm not sure I understand the question. This 14 is -- seems like, to me, a general indemnity on the 15 project, so if there is something that doesn't go down the 16 right path, there is some kind of indemnification, but I 17 cannot be more specific. I would have to have much more 18 knowledge on this specific project, which I don't have, 19 unfortunately.</p> <p>20 Q Okay. Okay. We'll move along to the page 21 that's Bates stamped 21133, and it's going to be -- we're 22 in the same agreement, and it's section 3.5, "Sharing 23 information after closing". Do you see that section?</p> <p>24 A 3.5, yes.</p> <p>25 Q Okay. And this section specifically notes that</p>

<p>Page 62</p> <p>1 the parties shall agree on -- and it's about close to the</p> <p>2 middle of the paragraph where this starts. "The parties</p> <p>3 shall agree on an acceptable manner for communication,</p> <p>4 which may include the creation of a committee consisting</p> <p>5 of representatives designated by EGPNA and seller</p> <p>6 respectfully in order to allow seller to provide input as</p> <p>7 to," and if we go to number eight, "communications with</p> <p>8 the Osage Nation."</p> <p>9 Do you see this?</p> <p>10 A Yeah.</p> <p>11 Q And what would the purpose of this provision be,</p> <p>12 do you think?</p> <p>13 A I would -- they would just be assumptions, but</p> <p>14 if you want, I can assume.</p> <p>15 Q Who would -- who from the EGP team would have</p> <p>16 been responsible for any committee that was created under</p> <p>17 this provision?</p> <p>18 A There was no committee from what can I tell, so</p> <p>19 I don't know. I can assume who could have been a member,</p> <p>20 but I don't even know if the committee was ever put in</p> <p>21 place.</p> <p>22 Q Okay.</p> <p>23 A Again, it was always the same people. Mike,</p> <p>24 Steve, Bill, David, me. At the time, me, no, because at</p> <p>25 the time, I was well gone. It was September of 2014, so I</p>	<p>Page 64</p> <p>1 Q And generally speaking, what would the purpose</p> <p>2 of this type of loan agreement be?</p> <p>3 A What agreement? This one?</p> <p>4 Q Yes.</p> <p>5 MS. FAIN: Julie, can you scroll up to the first</p> <p>6 page, please.</p> <p>7 A I cannot tell you. I mean, I would have to read</p> <p>8 the agreement. I have no idea.</p> <p>9 Q (BY MS. FAIN) Okay.</p> <p>10 A I don't know. Probably what we are doing here</p> <p>11 is -- it's very difficult to tell. I mean, it's -- I just</p> <p>12 see the first page, but I'm assuming -- again, it's an</p> <p>13 assumption, it's financing Tradewind.</p> <p>14 Q Okay.</p> <p>15 A For the development of the project. But I'm --</p> <p>16 we can read the agreement if you want to.</p> <p>17 Q I'll move along to hopefully a section that will</p> <p>18 help us work through this. Let's see. So in 1.1 E of</p> <p>19 this agreement, it states that -- oh, right there. At the</p> <p>20 end of the third line, it states that in the event --</p> <p>21 let's see. "The parties contemplated that subject to</p> <p>22 certain conditions lender or affiliate thereof will</p> <p>23 purchase the equity of Osage from borrower on or before</p> <p>24 September 30, 2014, or such later date as elected by</p> <p>25 lender."</p>
<p>Page 63</p> <p>1 wasn't -- I wasn't -- I was in the U.S. extremely</p> <p>2 sporadically and mostly on the weekends because I was</p> <p>3 going to school.</p> <p>4 Q Okay. Let's see. We will move along to a</p> <p>5 different document. And I believe it is still at the time</p> <p>6 before your role had changed but by one month.</p> <p>7 MS. FAIN: So, Julie, if you could go ahead and</p> <p>8 pull up a document that has previously been introduced as</p> <p>9 Exhibit 80.</p> <p>10 Q (BY MS. FAIN) Okay. And it says Amended and</p> <p>11 Restated Osage Project Loan Agreement. Are you -- do you</p> <p>12 recognize this agreement?</p> <p>13 A No.</p> <p>14 Q Okay. And let's see. Now, this agreement, like</p> <p>15 the previous one, has a space for signature.</p> <p>16 MS. FAIN: Julie, can you go ahead and scroll</p> <p>17 down to Bates stamp page 14735.</p> <p>18 Q (BY MS. FAIN) Now, here we have the by line</p> <p>19 indicating that you are the CEO of Enel Kansas, LLC. Is</p> <p>20 that correct?</p> <p>21 A I can't tell you, but I can probably -- I assume</p> <p>22 so.</p> <p>23 Q Okay. And, also, the by line for EGPNA also</p> <p>24 reflects that you're CEO and president at the time.</p> <p>25 A That is my signature on there.</p>	<p>Page 65</p> <p>1 Do you know what conditions would have been</p> <p>2 contemplated?</p> <p>3 A (Shakes head in disaffirmation.)</p> <p>4 Q Okay.</p> <p>5 MR. McCORMACK: I didn't see that. I think, for</p> <p>6 the record, if he shook his head no, we should probably</p> <p>7 indicate that.</p> <p>8 MS. FAIN: Oh, yes. Thank you, Mr. McCormack.</p> <p>9 Q (BY MS. FAIN) Can you go ahead and say whether</p> <p>10 you know what those -- what conditions were contemplated?</p> <p>11 A No.</p> <p>12 Q Okay. You -- and you said "no". Is that</p> <p>13 correct?</p> <p>14 A Yes.</p> <p>15 Q Okay. And so continuing on from the same</p> <p>16 section, the -- it states in part, "In the event that such</p> <p>17 purchase is not concluded on or about September 30, 2014</p> <p>18 and the funds available under the Osage loan are not</p> <p>19 sufficient to keep the Osage project construction on</p> <p>20 schedule and current with respect to its related payment</p> <p>21 obligations."</p> <p>22 What is your understanding of what "on schedule"</p> <p>23 and "current with respect to its related payment</p> <p>24 obligations" means?</p> <p>25 A I don't know what the "related payment</p>

<p>Page 68</p> <p>1 obligations" are about, so I have no idea. It looks like</p> <p>2 at that line that needed to be met to make the Osage</p> <p>3 project viable.</p> <p>4 <b>Q Okay.</b></p> <p>5 A I need to read the document to have more</p> <p>6 knowledge about it. To be honest, I mean, looking at just</p> <p>7 pieces and parts, I have no idea what we're talking about.</p> <p>8 <b>Q Okay. Okay. We'll move on to Section 3.2 at</b></p> <p>9 <b>Bates stamp page 14729. And do you see where we're at,</b></p> <p>10 <b>3.2?</b></p> <p>11 A Yeah.</p> <p>12 <b>Q Their approval rights?</b></p> <p>13 A Yeah.</p> <p>14 <b>Q It says that, "Notwithstanding the foregoing,</b></p> <p>15 <b>borrower shall not, on behalf of Osage or otherwise, allow</b></p> <p>16 <b>Osage to undertake any of the following actions relating</b></p> <p>17 <b>to the Osage project without the prior written approval of</b></p> <p>18 <b>lender, such approval not to be unreasonably withheld,</b></p> <p>19 <b>conditioned, or delayed."</b></p> <p>20 <b>Do you see where it says this?</b></p> <p>21 A Yes.</p> <p>22 <b>Q Okay. And I'm going to go ahead and read a few</b></p> <p>23 <b>bullet points or subsections and start with Subsection J.</b></p> <p>24 MS. FAIN: And, Julie, if you could, scroll down</p> <p>25 just a bit.</p>	<p>Page 68</p> <p>1 <b>contract."</b></p> <p>2 <b>So under the -- under this agreement, is it</b></p> <p>3 <b>accurate to say that Tradewind, based on these provisions,</b></p> <p>4 <b>was contractually bound to prevent Osage Wind from</b></p> <p>5 <b>obtaining a mining permit from the Osage Nation unless</b></p> <p>6 <b>Tradewind got prior written approval from Enel Kansas?</b></p> <p>7 MR. McCORMACK: Wait. Object to the form of the</p> <p>8 question. Calls for a legal conclusion. Assumes facts</p> <p>9 not in evidence. It's speculative.</p> <p>10 But you can answer the question.</p> <p>11 A I don't know. We need to scroll up and read</p> <p>12 the -- the -- every single letter again. Can you go up</p> <p>13 once again, please, where it talks about the permits?</p> <p>14 MS. FAIN: Julie, can you go ahead and scroll up</p> <p>15 to the opening that really describes what -- that</p> <p>16 introduction for 3.2.</p> <p>17 THE WITNESS: Oh, I see it. Okay. Please go</p> <p>18 down one more. Oh, too much. Okay.</p> <p>19 A I don't know. I mean, I -- it looks to me like</p> <p>20 many other conditions we see in many other wind projects.</p> <p>21 You're are substantially funding the project. You're</p> <p>22 asking the developer to behave in the proper -- in the</p> <p>23 proper way, trying to reduce the risk on the project.</p> <p>24 Other than the risk in the project goes through these</p> <p>25 actions, I cannot speculate anything more.</p>
<p>Page 67</p> <p>1 <b>Q (BY MS. FAIN) And it says, "Finalizing any</b></p> <p>2 <b>material permit except where not practicable, as, for</b></p> <p>3 <b>example, may be the case for permit for which the</b></p> <p>4 <b>applications have already been submitted as of the date</b></p> <p>5 <b>hereof and for which the issuance is automatic."</b></p> <p>6 A Uh-huh.</p> <p>7 <b>Q And then below that at L, we have hiring of any</b></p> <p>8 <b>employees.</b></p> <p>9 A Uh-huh.</p> <p>10 <b>Q And Subsection N, we have, "Issuing any press</b></p> <p>11 <b>releases with respect to Osage, the Osage project, or</b></p> <p>12 <b>related permitting process, or with respect to the Osage</b></p> <p>13 <b>Nation."</b></p> <p>14 A I cannot read that. I don't see it.</p> <p>15 MR. McCORMACK: Yeah. That's not showing up on</p> <p>16 the -- on the screen.</p> <p>17 MS. FAIN: Sorry.</p> <p>18 <b>Q (BY MS. FAIN) That is Subsection N.</b></p> <p>19 A N. "Issuing any press releases with respect to</p> <p>20 Osage, the Osage project, or related permitting process,</p> <p>21 or with respect to the Osage Nation." Okay.</p> <p>22 <b>Q And then we have Subsection O, "Submitting</b></p> <p>23 <b>comments with respect to any permit or environmental</b></p> <p>24 <b>assessment." And, finally, Subsection P, "Issuing any</b></p> <p>25 <b>limited or full notices to proceed under any construction</b></p>	<p>Page 69</p> <p>1 If you take any wind agreement, you will see</p> <p>2 it's, you know, I mean, at least from my experience, full</p> <p>3 of ways trying to de-risk the project, trying to make the</p> <p>4 developer following the right path. It looks to me like</p> <p>5 this is what we we're trying to do with that.</p> <p>6 <b>Q Okay. So that's -- I think that's helpful in</b></p> <p>7 <b>just knowing that it's -- is it accurate to say your</b></p> <p>8 <b>understanding or your representation is that this type of</b></p> <p>9 <b>provision is aimed at de-risking the project?</b></p> <p>10 A I'm assuming so, yeah.</p> <p>11 <b>Q Okay.</b></p> <p>12 A You're lending money. You want to de-risk.</p> <p>13 <b>Q Do you know if anyone at Enel ever gave</b></p> <p>14 <b>Tradewind written approval to obtain a permit from the</b></p> <p>15 <b>Osage Nation and the Bureau of Indian Affairs to mine the</b></p> <p>16 <b>Osage Mineral Estate?</b></p> <p>17 A I have no idea.</p> <p>18 <b>Q Okay. Do you know if the construction of the</b></p> <p>19 <b>Osage Wind Farm would have been possible without this loan</b></p> <p>20 <b>from Enel?</b></p> <p>21 A I have no idea. I mean, we were lending money</p> <p>22 to Tradewind at the time. As I told you earlier, they are</p> <p>23 very good developers, and we were keeping them alive, if</p> <p>24 you will. I mean, it's a business way to fix up a job, it</p> <p>25 sounds, in a way to make sure if there is a down, they can</p>



<p>1 keep working.</p> <p>2 <b>Q In your -- in these types of agreements that</b></p> <p>3 <b>you've had with Tradewind, did you have -- did Enel have a</b></p> <p>4 <b>right, like a first right of -- or an option to purchase</b></p> <p>5 <b>developments or a right of first refusal of Tradewind</b></p> <p>6 <b>projects, development projects?</b></p> <p>7 A I cannot remember the details, but I remember</p> <p>8 that we had some kind of right to buy the project that</p> <p>9 we're -- at least on this specific instance, yes.</p> <p>10 <b>Q Okay. And do you know or have an idea of when</b></p> <p>11 <b>Enel would have notified Tradewind that they intended to</b></p> <p>12 <b>exercise their option on the Osage Wind project?</b></p> <p>13 A (Shakes head in disaffirmation.)</p> <p>14 MR. McCORMACK: Again, for the record, he shook</p> <p>15 his head no.</p> <p>16 THE WITNESS: Sorry.</p> <p>17 <b>Q (BY MS. FAIN) I'll ask it again, and if you</b></p> <p>18 <b>could say what your response is, that will help our court</b></p> <p>19 <b>reporter immensely.</b></p> <p>20 <b>Do you -- do you recall when Enel would have</b></p> <p>21 <b>notified Tradewind that they intended to exercise their</b></p> <p>22 <b>option on the Osage Wind project?</b></p> <p>23 A No.</p> <p>24 MS. FAIN: Okay. And we're going to be getting</p> <p>25 into another section. Is this a good time for a quick</p>	<p>Page 70</p> <p>1 A (Shakes head in disaffirmation.)</p> <p>2 <b>Q Okay.</b></p> <p>3 MR. McCORMACK: He shook his head. He shook his</p> <p>4 head no.</p> <p>5 A I'm sure I didn't.</p> <p>6 <b>Q (BY MS. FAIN) You're sure you didn't receive</b></p> <p>7 <b>this?</b></p> <p>8 A Yeah.</p> <p>9 <b>Q Okay. And do you know if -- are you aware if</b></p> <p>10 <b>anybody at Enel Green Power spoke to external counsel</b></p> <p>11 <b>about issues related to the Osage Nation's rights as they</b></p> <p>12 <b>affect the Osage Wind project?</b></p> <p>13 A I don't know.</p> <p>14 <b>Q Okay.</b></p> <p>15 A It would be speculation.</p> <p>16 <b>Q And shifting gears to your role as a board</b></p> <p>17 <b>member of Tradewind. Did you have -- did the Tradewind</b></p> <p>18 <b>board ever have any interaction with Tradewind's</b></p> <p>19 <b>attorneys?</b></p> <p>20 A No, I'm assuming.</p> <p>21 <b>Q Okay. Well, we'll go ahead and read a section</b></p> <p>22 <b>of this just to get a better idea of what it covers, and</b></p> <p>23 <b>we'll go on to talk about how that's relevant here. But</b></p> <p>24 <b>the question presented in this memo is whether, "A surface</b></p> <p>25 <b>owner who excavates land for the purpose of construction</b></p>	<p>Page 72</p>
<p>1 break, or do folks on the Zoom want to keep going?</p> <p>2 MR. McCORMACK: I like breaks. I'm happy to</p> <p>3 take a break. So I'll see you back in ten minutes?</p> <p>4 MS. FAIN: That would be great.</p> <p>5 And does that work for the U.S.?</p> <p>6 MR. ASHWORTH: Yes.</p> <p>7 THE VIDEOGRAPHER: We're off the record at</p> <p>8 9:16 a.m.</p> <p>9 (Break taken.)</p> <p>10 THE VIDEOGRAPHER: We are back on the record at</p> <p>11 9:26 a.m.</p> <p>12 <b>Q (BY MS. FAIN) Okay. We'll move along on our</b></p> <p>13 <b>topics, and we're going to move on to a document that was</b></p> <p>14 <b>previously introduced as Exhibit 36. And Julie will have</b></p> <p>15 <b>that pulled up.</b></p> <p>16 <b>This document is a memorandum from Sarah</b></p> <p>17 <b>Stevenson to Bill Scott titled Rights of Surface Owners to</b></p> <p>18 <b>Use Oil, dated October 31, 2013. I'm going to refer to</b></p> <p>19 <b>the various versions of this memo as "the Modrall Sperling</b></p> <p>20 <b>memo".</b></p> <p>21 <b>Do you recall ever having seen this memo?</b></p> <p>22 A No, I do not. And to be honest with you, I</p> <p>23 don't know who Sarah Stevenson or Bill Scott are.</p> <p>24 <b>Q Okay. Did you -- let's see. So you don't</b></p> <p>25 <b>recall that you've ever received this?</b></p>	<p>Page 71</p> <p>1 <b>consistent with its surface rights and does not remove the</b></p> <p>2 <b>land excavated from the property is engaged in mining of</b></p> <p>3 <b>the mineral state and requires a mining permit".</b></p> <p>4 <b>Do you have any understanding of why the</b></p> <p>5 <b>condition "does not remove the land excavated from the</b></p> <p>6 <b>property" would have been included in this memo about the</b></p> <p>7 <b>Osage Wind project?</b></p> <p>8 MR. McCORMACK: Object to the form of the</p> <p>9 question. Lacks foundation. Assumes facts not in</p> <p>10 evidence.</p> <p>11 But you can answer the question.</p> <p>12 A It would be just assume -- an assumption. I</p> <p>13 mean, my assumption is that they are -- whoever's caught</p> <p>14 trying to -- what -- sorry, trying to figure out if --</p> <p>15 excavation, and then whether without taking anything out</p> <p>16 or away is considered mining. I'm reading with you so</p> <p>17 I've -- I mean, I cannot say.</p> <p>18 <b>Q Sure. And at this time and -- that this memo</b></p> <p>19 <b>was drafted --</b></p> <p>20 MS. FAIN: Julie, can you scroll down just a</p> <p>21 bit?</p> <p>22 MR. McCORMACK: Other way.</p> <p>23 MS. FAIN: Or up.</p> <p>24 MR. McCORMACK: Yeah.</p> <p>25 <b>Q (BY MS. FAIN) The time of this memo, the time of</b></p>	<p>Page 73</p>



<p>Page 74</p> <p>1 its drafting was October 31, 2013. Were you made aware</p> <p>2 either -- well, first, in your role at Enel, were you ever</p> <p>3 made aware of issues regarding the Osage Nation?</p> <p>4 MR. McCORMACK: Do you mean at this time,</p> <p>5 Counsel, or some other time, or ever?</p> <p>6 MS. FAIN: At this point, ever.</p> <p>7 <b>Q (BY MS. FAIN) At any time when you were at Enel</b></p> <p>8 <b>Green Power North America, were you made aware of any</b></p> <p>9 <b>issues with regard to Osage Nation?</b></p> <p>10 A If I remember, there were several different</p> <p>11 issues with the project, as in any other project we build.</p> <p>12 I cannot remember specifically what we're talking about.</p> <p>13 I remember there was something with oil and gas, but,</p> <p>14 again, we're in Oklahoma if I'm not mistaken, and that</p> <p>15 kind of problem was extremely frequent. So I cannot say</p> <p>16 that there were -- let me rephrase it. I am sure that</p> <p>17 there were several issues with the project, as in many,</p> <p>18 many other projects, because they're extremely complex</p> <p>19 things. I honestly don't recall anything specifically to</p> <p>20 the -- regarding the Osage Nation.</p> <p>21 <b>Q Okay. Do you have an understanding of what</b></p> <p>22 <b>rights tribes have in Oklahoma?</b></p> <p>23 A No.</p> <p>24 <b>Q Do you have an understanding that federally</b></p> <p>25 <b>recognized tribes are governments?</b></p>	<p>Page 75</p> <p>1 A Well --</p> <p>2 MR. McCORMACK: Object to the form. Wait.</p> <p>3 Object to the form of the question. Calls for legal</p> <p>4 conclusion.</p> <p>5 But you can answer.</p> <p>6 A I'm assuming. I mean, if you call it a</p> <p>7 "nation", I'm assuming it has its own citizens. But</p> <p>8 what's the -- what are the rules around it, what's -- how</p> <p>9 it works, that's as far as my knowledge.</p> <p>10 <b>Q (BY MS. FAIN) Are you aware if at any time</b></p> <p>11 <b>during the Osage Wind project, during the leading up to</b></p> <p>12 <b>the agreement between Enel Kansas and Tradewind and then</b></p> <p>13 <b>the construction of the project, whether Enel considered</b></p> <p>14 <b>the Osage Nation as a government with some scope of</b></p> <p>15 <b>jurisdictional authority in Osage County?</b></p> <p>16 A You're asking if Enel ever considered?</p> <p>17 <b>Q Yes.</b></p> <p>18 A I'm -- I really hope so. I mean, we were</p> <p>19 supported by tons of advisers, and that's their role. So</p> <p>20 that's why developing a project's so expensive. I mean,</p> <p>21 you try to be a good neighbor and try to understand all</p> <p>22 the different intricacies that are effecting that specific</p> <p>23 land. I mean, you're talking about hectares and hectares</p> <p>24 or acres and acres of land, as I said, with different</p> <p>25 owners. So I really hope that Enel Green Power took care</p>
<p>Page 75</p> <p>1 MR. McCORMACK: Object. Wait. Object to the</p> <p>2 form of the question. Assumes facts not in evidence and</p> <p>3 seeks legal conclusion.</p> <p>4 But you can answer the question.</p> <p>5 A Can you repeat the question?</p> <p>6 <b>Q (BY MS. FAIN) Do you have -- what is your -- let</b></p> <p>7 <b>me rephrase it. What is your understanding of what a</b></p> <p>8 <b>tribe is?</b></p> <p>9 MR. McCORMACK: Object to the form of the</p> <p>10 question. Vague and ambiguous.</p> <p>11 But you can answer the question, if you can.</p> <p>12 A Well, I mean, getting into my knowledge about</p> <p>13 Indian tribes in the United States, I'm assuming, again,</p> <p>14 that they're people who were there before people from</p> <p>15 Europe showed up. They were divided in tribes. They were</p> <p>16 in the -- in the -- in what's the United States today much</p> <p>17 before the Europeans arrived.</p> <p>18 Is that enough of a description? I don't know.</p> <p>19 I'm not sure exactly what you're wanting me to describe.</p> <p>20 <b>Q (BY MS. FAIN) No, that's fine, and hopefully I</b></p> <p>21 <b>can narrow it even further. Are you aware that the Osage</b></p> <p>22 <b>Nation has its own elected government?</b></p> <p>23 A No, I don't.</p> <p>24 <b>Q Okay. And are you aware that the Osage Nation</b></p> <p>25 <b>has its own citizens?</b></p>	<p>Page 77</p> <p>1 of all these issues. And, again, we rely, on one side, a</p> <p>2 very senior and strong team, and on the other side, a very</p> <p>3 large number of advisers, especially on these kind of</p> <p>4 topics.</p> <p>5 <b>Q On this memo that's on the screen, if we can go</b></p> <p>6 <b>to the second page, Bates stamped number 415, there is a</b></p> <p>7 <b>paragraph. It's right under the "analysis" section. It's</b></p> <p>8 <b>that first paragraph under "analysis" that says, "The</b></p> <p>9 <b>Osage Tribe has indicated that it will assert Tradewind</b></p> <p>10 <b>Energy must receive a mining permit from the Osage</b></p> <p>11 <b>Minerals Council in order to construct and operate the</b></p> <p>12 <b>wind farm on the grounds that the excavation and</b></p> <p>13 <b>construction and permanent placement of the towers</b></p> <p>14 <b>constitutes mining of the Osage's Mineral Estate."</b></p> <p>15 <b>Do you see where it says that?</b></p> <p>16 A Yeah.</p> <p>17 <b>Q Have you -- have you been advised at any point</b></p> <p>18 <b>as to the Osage Tribe's intent to assert this right or</b></p> <p>19 <b>this require -- this permit requirement?</b></p> <p>20 A If I've been -- forgive me. I'm not sure I</p> <p>21 understand the question. If I've been advised that</p> <p>22 they -- can you rephrase that in such a way that I</p> <p>23 understand what kind of answer to give?</p> <p>24 <b>Q Sure. Sure. Were you ever advised as to the</b></p> <p>25 <b>Osage Nation saying that they required a permit for the</b></p>

<p>Page 78</p> <p>1 <b>wind turbines for the Osage Wind project?</b></p> <p>2 MR. McCORMACK: Object to the form.</p> <p>3 Sorry. Go ahead.</p> <p>4 Object to the form of the question. Vague and</p> <p>5 ambiguous.</p> <p>6 But you can answer it.</p> <p>7 A I think you need to specify exactly what you</p> <p>8 mean with "advise". Because was I told at the time that</p> <p>9 they required the permit? I'm sure that I was told. I</p> <p>10 was told in probably different forms. If I was advised,</p> <p>11 it seems like, you know, some legal counsel came to me</p> <p>12 saying, hey, look, there is something here that -- it's --</p> <p>13 I'm not sure exactly what you mean by "advise".</p> <p>14 <b>Q I guess, earlier we spoke about how an issue</b></p> <p>15 <b>might rise to your desk --</b></p> <p>16 A Yes.</p> <p>17 <b>Q -- instead of just the BD team.</b></p> <p>18 A Yes.</p> <p>19 <b>Q Was the issue of the Osage Nation ever raised to</b></p> <p>20 <b>your level with regard to the permitting requirement that</b></p> <p>21 <b>the Osage Nation was asserting?</b></p> <p>22 A You're talking about this specific permit</p> <p>23 requirement or some other stuff? Because the project was</p> <p>24 extremely complex, so I'm sure that there were, you know,</p> <p>25 several bumps. Like every time, it happens, you know. I</p>	<p>Page 80</p> <p>1 A The issue was elevated to -- thank you for the</p> <p>2 clarification. It was definitely -- it definitely came to</p> <p>3 my attention. I cannot tell you how the decision was</p> <p>4 made. I'm assuming, again, as usual in these cases, that</p> <p>5 was the collective decision made by the management team at</p> <p>6 the time with tons, tons of support from legal advisers.</p> <p>7 I mean, that's how we operate. We want to be obeying the</p> <p>8 law in every single occasion we have, which is hopefully</p> <p>9 always. But I cannot be more specific than this.</p> <p>10 <b>Q Okay. So in this -- in this case of this permit</b></p> <p>11 <b>that the Osage Minerals Council was asserting that was</b></p> <p>12 <b>required, you talk about how you assume that the team</b></p> <p>13 <b>would have considered it. And is this something that you</b></p> <p>14 <b>would have weighed in with the team on or were you</b></p> <p>15 <b>comfortable with whatever decision the team handling this</b></p> <p>16 <b>matter determined was the right way to proceed?</b></p> <p>17 MR. McCORMACK: Well, first of all, let me</p> <p>18 object to the form of question as assuming facts not in</p> <p>19 evidence and also as asked and answered.</p> <p>20 But with those provisors, you can answer the</p> <p>21 question.</p> <p>22 A Here we're talking about permitting, which is an</p> <p>23 essential component of every energy project in general. I</p> <p>24 was going say wind project, but it's every project that</p> <p>25 you build. So it seems to me like, you know, it's, again,</p>
<p>Page 79</p> <p>1 mean, I'm 99 percent sure that stuff came up and the team</p> <p>2 discussed it. But if you're talking about this specific</p> <p>3 permit, I mean, I'm sure that at a certain point somehow</p> <p>4 it came up, but I cannot be more specific.</p> <p>5 <b>Q Okay. I would clarify that I am talking</b></p> <p>6 <b>specifically about the permitting requirement around what</b></p> <p>7 <b>constitutes mining and the Osage Minerals Council's right</b></p> <p>8 <b>to issue permits in relation to mining of the Osage</b></p> <p>9 <b>Mineral Estate.</b></p> <p>10 MR. McCORMACK: I'm not sure there's a question</p> <p>11 there, but I object to the form of the question as</p> <p>12 mischaracterizing facts.</p> <p>13 But if there is a question there, you can answer</p> <p>14 it.</p> <p>15 A I'm not sure I understand the question.</p> <p>16 <b>Q (BY MS. FAIN) Did you --</b></p> <p>17 A What --</p> <p>18 <b>Q I guess I understand that you say that there</b></p> <p>19 <b>were many complex components to this project, and, you</b></p> <p>20 <b>know, not -- usually the BD team would take care of the</b></p> <p>21 <b>day-to-day issues.</b></p> <p>22 A Yes.</p> <p>23 <b>Q Did this issue, the Osage Minerals Council</b></p> <p>24 <b>permitting, ever arise to or was it ever elevated to you</b></p> <p>25 <b>to make a decision on?</b></p>	<p>Page 81</p> <p>1 another permit, and you need to figure out how to handle</p> <p>2 it. I -- there is not much to add other than that.</p> <p>3 Was I part of the decision about doing what?</p> <p>4 Because if you're -- if we're talking about the asking for</p> <p>5 figuring out what kind of permit we're talking about, if</p> <p>6 it was legally required or not and so on, that's usually</p> <p>7 something that was managed, as hundreds of different</p> <p>8 permits that you need when you build a project like this</p> <p>9 one, directly by BD/legal level.</p> <p>10 <b>Q Okay. So their decision -- a decision against</b></p> <p>11 <b>seeking a permit from the Osage Minerals Council, is that</b></p> <p>12 <b>something you were comfortable with based on the team that</b></p> <p>13 <b>would have handled it?</b></p> <p>14 A I'm not sure I understand the question again. I</p> <p>15 mean, it depends on how the team felt regarding the -- how</p> <p>16 should I say, the importance, the gravity of the specific</p> <p>17 situation. I mean, can you imagine, I mean, the team</p> <p>18 coming to me for every permit that they need for every</p> <p>19 single tower that needs to be installed? What we have</p> <p>20 here, it seems like, again, they're trying to figure out</p> <p>21 what kind of permit is needed and to keep going with the</p> <p>22 project.</p> <p>23 <b>Q Okay. Give me just one moment. So you have --</b></p> <p>24 <b>as you mentioned earlier, you are not familiar with the</b></p> <p>25 <b>firm Modrall Sperling. Is that accurate?</b></p>

<p>Page 82</p> <p>1 A With the firm that --</p> <p>2 <b>Q The firm -- I'm sorry. The firm that drafted</b></p> <p>3 <b>this memo, Modrall Sperling.</b></p> <p>4 A Not specifically, no.</p> <p>5 <b>Q So you do not know why this memo was even</b></p> <p>6 <b>drafted. Is that accurate?</b></p> <p>7 A I believe they name the question presented. I'm</p> <p>8 assuming they had a question regarding the mining permit</p> <p>9 at the site, and they asked these lawyers, who are</p> <p>10 probably experts in this field, about it; how do you --</p> <p>11 how do we get a permit, how do you -- how can you get a</p> <p>12 permit, is the permit required? But these are all</p> <p>13 assumptions. I have no idea. This is October 31, 2013.</p> <p>14 They are developing the project, so they are talking with</p> <p>15 different parties to figure it out.</p> <p>16 <b>Q Would you be surprised if they were talking to</b></p> <p>17 <b>attorneys for Enel?</b></p> <p>18 A No.</p> <p>19 <b>Q Okay. So I'm going to move on to another</b></p> <p>20 <b>exhibit that's -- that was previously introduced, and it</b></p> <p>21 <b>was -- it's Exhibit 183. And it's an email from</b></p> <p>22 <b>Tradewind's attorney, Steve Willman, to one of the</b></p> <p>23 <b>attorneys for Modrall Sperling, and it's dated August 19,</b></p> <p>24 <b>2014.</b></p> <p>25 <b>And do you -- do you see this email on the</b></p>	<p>Page 84</p> <p>1 A I mean, I don't know because I am -- I was not</p> <p>2 there when they declared it. But, I mean, if they used</p> <p>3 the memo, it's -- it's -- I mean, we collect all the</p> <p>4 different documentation, and then we read it and we try to</p> <p>5 figure out what to do next, so I'm not surprised.</p> <p>6 <b>Q Okay. And so -- but you don't know who from</b></p> <p>7 <b>Enel Green Power would have communicated with Tradewind's</b></p> <p>8 <b>attorney?</b></p> <p>9 MR. McCORMACK: On this subject matter or on</p> <p>10 some subject matter?</p> <p>11 MS. FAIN: On this subject matter specifically.</p> <p>12 A No. I mean, if -- at this stage, usually the</p> <p>13 team involved is mostly business development. But, again,</p> <p>14 I -- the fact that EGP has asked to have it scaled back is</p> <p>15 an assumption based on an email between people that are</p> <p>16 not EGP.</p> <p>17 <b>Q (BY MS. FAIN) Okay. I'm going to go ahead and</b></p> <p>18 <b>show you. We're going to show you another exhibit that</b></p> <p>19 <b>has previously been introduced as Exhibit 81, and it's</b></p> <p>20 <b>another version of the memo from Modrall Sperling. And</b></p> <p>21 <b>this specific memo is the one that was sent to the Bureau</b></p> <p>22 <b>of Indian Affairs' superintendent of the Osage Nation</b></p> <p>23 <b>along with the U.S. Solicitor Alan Woodcock on October 20,</b></p> <p>24 <b>2014, and it was also filed with -- in the federal court</b></p> <p>25 <b>case to support their response to the United States'</b></p>
<p>Page 83</p> <p>1 screen?</p> <p>2 A Uh-huh.</p> <p>3 <b>Q And it's to Lynn Slade, one of the Modrall</b></p> <p>4 <b>Sperling attorneys, from Steve Willman from a firm that</b></p> <p>5 <b>represented Tradewind. And he said, "Lynn, are you</b></p> <p>6 <b>available for a call tomorrow regarding the Osage Mineral</b></p> <p>7 <b>memo? EGP has asked to have it scaled back (without</b></p> <p>8 <b>conclusions). Thanks, Steve."</b></p> <p>9 <b>And on -- do you have any idea who at EGP would</b></p> <p>10 <b>have made this request to have the memo "scaled back"?</b></p> <p>11 A For one, I had -- I would have no idea. But I</p> <p>12 would say, number two, I'm not even sure that EGP asked to</p> <p>13 have it scaled back. I mean, this is some guy writing to</p> <p>14 another guy, but there's no EGP people in the memo. I</p> <p>15 mean, this could be just a developer trying to do</p> <p>16 something with the project. I mean, this doesn't imply</p> <p>17 any involvement why EGP.</p> <p>18 <b>Q Are you -- are you aware that defendants in --</b></p> <p>19 <b>here in this case have asserted that they relied in good</b></p> <p>20 <b>faith on this memo by Modrall Sperling for not getting a</b></p> <p>21 <b>permit from the Osage Minerals Council?</b></p> <p>22 A That would be us, Enel Green Power?</p> <p>23 <b>Q I'm sorry. What?</b></p> <p>24 A Defendant would be us, Enel?</p> <p>25 <b>Q That's correct.</b></p>	<p>Page 85</p> <p>1 <b>original motion for preliminary injunction.</b></p> <p>2 <b>So it's -- is it correct to say you -- or I</b></p> <p>3 <b>guess I'm asking, can you confirm that I'm understanding</b></p> <p>4 <b>what you said earlier, that you were not aware that this</b></p> <p>5 <b>memo has been relied upon to show defendants acted in good</b></p> <p>6 <b>faith?</b></p> <p>7 MR. McCORMACK: Wait. Object to the form of the</p> <p>8 question. Assumes facts not in evidence.</p> <p>9 Mischaracterizes his prior testimony.</p> <p>10 But you can answer the question.</p> <p>11 A I didn't -- I don't recall this specific memo,</p> <p>12 so I don't know if it was utilized or not to move ahead</p> <p>13 with the project or not. So I -- I cannot -- to the</p> <p>14 specific question, the answer is no. Okay.</p> <p>15 <b>Q (BY MS. FAIN) Okay. Just one moment, please.</b></p> <p>16 <b>So did you, to your knowledge or your recollection, ever</b></p> <p>17 <b>rely on a memo that stated a permit wasn't required from</b></p> <p>18 <b>the Osage Minerals Council?</b></p> <p>19 MR. McCORMACK: Object to the form of the</p> <p>20 question. Vague and ambiguous. Asked and answered.</p> <p>21 But you can answer the question.</p> <p>22 A Relied to do what? Revise it so I can -- it's</p> <p>23 very generic. Relied to do what? I mean, what am I --</p> <p>24 it's October 20th of 2014. I'm probably sitting in Rome.</p> <p>25 <b>Q (BY MS. FAIN) Okay.</b></p>

<p>Page 86</p> <p>1 A Help me. I mean, if I understand the question,</p> <p>2 I'll try to answer it, but I'm honestly -- I'm not sure</p> <p>3 exactly what you want from me.</p> <p>4 <b>Q In terms of reliance, it's that, did you rely on</b></p> <p>5 <b>the memo for any reason related to the rights of the Osage</b></p> <p>6 <b>Nation?</b></p> <p>7 MR. McCORMACK: Are you speaking about</p> <p>8 Mr. Venturini in his personal capacity or are you speaking</p> <p>9 some other capacity?</p> <p>10 MS. FAIN: As the person who was still signing</p> <p>11 off on things on behalf of Enel Green Power North America</p> <p>12 and Enel Kansas.</p> <p>13 MR. McCORMACK: All right. Then I will object</p> <p>14 to the form of the question as vague and ambiguous and as</p> <p>15 asked and answered.</p> <p>16 But you can answer the question.</p> <p>17 A Unfortunately, I have to assume, which I don't</p> <p>18 know if it's the proper thing to do. At the time, I'm</p> <p>19 sure the management team had to make a decision, and as</p> <p>20 usual, I'm sure that we discussed about everything related</p> <p>21 to whatever project, and the management team tried to get</p> <p>22 to the best possible conclusion.</p> <p>23 Unfortunately, I have to say, and I am ashamed</p> <p>24 of this, at this time I was not very present in the United</p> <p>25 States because I had to deal with 100 million other things</p>	<p>Page 88</p> <p>1 I've seen the letter before, yes.</p> <p>2 <b>Q Okay. And when did you -- do you recall when</b></p> <p>3 <b>you received the letter?</b></p> <p>4 A No.</p> <p>5 <b>Q Okay.</b></p> <p>6 A I would say probably I never received it.</p> <p>7 <b>Q Okay. And --</b></p> <p>8 A I wasn't -- I wasn't there, so my -- most of the</p> <p>9 correspondence was -- work-related was opened directly by</p> <p>10 the office in the United States and then managed by that</p> <p>11 office.</p> <p>12 <b>Q So in that case, how would you have received the</b></p> <p>13 <b>letter? Who would have made you aware of this letter?</b></p> <p>14 A I have seen it. I have definitely seen it a</p> <p>15 couple days ago when my legal counsel described to me what</p> <p>16 the case was all about.</p> <p>17 <b>Q Okay. Did you -- do you know if you saw this</b></p> <p>18 <b>letter back in 2014 when it was initially sent?</b></p> <p>19 A As I said, very likely that I didn't see it. I</p> <p>20 cannot swear on it because I honestly -- I mean, it could</p> <p>21 have been scanned and sent to me, but that's unlikely.</p> <p>22 Most of the work-related correspondence was, as I said,</p> <p>23 opened at the office in the United States and then sent to</p> <p>24 the proper person to be -- to be handled.</p> <p>25 <b>Q Okay. And so were you -- were you ever in</b></p>
<p>Page 87</p> <p>1 around the globe. So I do not recall exactly the</p> <p>2 situation. It's my fault. I mean, I'm ashamed of it. It</p> <p>3 was a very complex time of my life.</p> <p>4 <b>Q Okay. Well, we will -- we will move along</b></p> <p>5 <b>and -- to another -- to another topic. Let's see. Let's</b></p> <p>6 <b>see.</b></p> <p>7 MS. FAIN: Do you mind if I take a quick five</p> <p>8 minute break?</p> <p>9 MR. McCORMACK: Not at all.</p> <p>10 MS. FAIN: Okay. Thank you.</p> <p>11 THE VIDEOGRAPHER: We're off the record at</p> <p>12 9:56 a.m.</p> <p>13 (Break taken.)</p> <p>14 THE VIDEOGRAPHER: We are back on record at</p> <p>15 10:05 a.m.</p> <p>16 <b>Q (BY MS. FAIN) Okay. So we're going to move on</b></p> <p>17 <b>to another document, and it's one that's been previously</b></p> <p>18 <b>entered into during a deposition. It's Exhibit 38, and</b></p> <p>19 <b>it's Bates stamped Osage Wind Priv 000243, and we have it</b></p> <p>20 <b>up on the screen now. And this letter is addressed to</b></p> <p>21 <b>you, and it's from Robin Phillips, who is the</b></p> <p>22 <b>superintendent of the Bureau of Indian Affairs Osage</b></p> <p>23 <b>Agency.</b></p> <p>24 <b>Are you familiar with this letter?</b></p> <p>25 A I don't know what you mean with "familiar", but</p>	<p>Page 89</p> <p>1 <b>communication with anyone at the Bureau of Indian Affairs</b></p> <p>2 <b>or the Department of Interior prior to receiving this</b></p> <p>3 <b>letter about rock crushing at the Osage Wind project site?</b></p> <p>4 A Me, Francesco Venturini?</p> <p>5 <b>Q Yes.</b></p> <p>6 A No.</p> <p>7 <b>Q Okay. Do you -- are you aware of anyone from</b></p> <p>8 <b>Enel who would have been in communication with the Bureau</b></p> <p>9 <b>of Indian Affairs or the Department of Interior prior to</b></p> <p>10 <b>receiving this letter on October 9, 2014?</b></p> <p>11 A My assumption is the BD team and the legal</p> <p>12 counsel.</p> <p>13 <b>Q Okay. And do you ever recall receiving another</b></p> <p>14 <b>letter from a United States federal agency involving a</b></p> <p>15 <b>wind farm Enel owned or operated or was constructing</b></p> <p>16 <b>beyond -- besides the Osage Wind project?</b></p> <p>17 A No.</p> <p>18 <b>Q Okay. How common is it for Enel to receive, or</b></p> <p>19 <b>more specifically, how common is it for you to receive</b></p> <p>20 <b>this type of letter from a federal agency in the United</b></p> <p>21 <b>States?</b></p> <p>22 A I would say quite uncommon, but I wouldn't be</p> <p>23 able to, you know, tell exactly the importance of the</p> <p>24 letter. As I said, I was not at the office in the United</p> <p>25 States at the time, so it -- it -- my assumption is that</p>

<p>Page 90</p> <p>1 the people in the office are a very senior and competent</p> <p>2 team, handled problems directly, so they received the</p> <p>3 letter and then they decided what to do.</p> <p>4 <b>Q Okay.</b></p> <p>5 A Mail was not opened and then scanned to me, and</p> <p>6 then me, from wherever I was, trying to redirect it to the</p> <p>7 right people in the office. It was handled directly at</p> <p>8 the office when received.</p> <p>9 <b>Q Did anyone from your team ever discuss with you</b></p> <p>10 <b>the need to meet with somebody from the Bureau of Indian</b></p> <p>11 <b>Affairs?</b></p> <p>12 A Meaning me meeting somebody?</p> <p>13 <b>Q Meaning anyone from Enel Green Power.</b></p> <p>14 A Not that I recollect, but I cannot discount it.</p> <p>15 I mean, who knows. I'm sure that there were contacts. I</p> <p>16 have no idea. I cannot tell you.</p> <p>17 <b>Q Okay. So in this letter, in the first</b></p> <p>18 <b>paragraph, it says that, "Mr. Whiteshield found a pit</b></p> <p>19 <b>approximately 60 feet wide and 30 feet deep. Limestone</b></p> <p>20 <b>had been crushed into small rocks and piled around the</b></p> <p>21 <b>wind turbine foundation."</b></p> <p>22 <b>Do you roughly recall any issues related to rock</b></p> <p>23 <b>crushing at the Osage Wind project?</b></p> <p>24 A No.</p> <p>25 <b>Q Okay.</b></p>	<p>Page 92</p> <p>1 <b>Q Did you have -- let's see. So did this</b></p> <p>2 <b>communication from the United States result in Enel</b></p> <p>3 <b>refraining from any further excavation?</b></p> <p>4 A Not that I know of. I think the project</p> <p>5 continued, but, again, exactly how that -- how that</p> <p>6 happened, it's -- I don't know the details. The United</p> <p>7 States had, still has, one of the strongest and most</p> <p>8 senior teams in Enel Green Power worldwide. I have, you</p> <p>9 know, full trust in the fact that they were doing the</p> <p>10 right thing, plus I know that they were using tons of</p> <p>11 external advice to move in the right direction.</p> <p>12 <b>Q Okay. Let's see. We're going to move along to</b></p> <p>13 <b>one final document, and then I'll be wrapping up and we</b></p> <p>14 <b>can move along to the United States. And this document</b></p> <p>15 <b>is -- it's been previously introduced as Exhibit 111.</b></p> <p>16 <b>It's Bates stamped Osage Wind 19012, and it's regarding a</b></p> <p>17 <b>change order from December 2014.</b></p> <p>18 <b>In your position at Enel, specifically when you</b></p> <p>19 <b>were at Enel Green Power North America but more generally</b></p> <p>20 <b>until somebody was named to replace your position there,</b></p> <p>21 <b>were you involved with or did you have the authority to</b></p> <p>22 <b>approve change order requests?</b></p> <p>23 A Yeah.</p> <p>24 <b>Q Let's see. Was there anyone at EGPNA besides</b></p> <p>25 <b>you who had authority to approve or deny a change order</b></p>
<p>Page 91</p> <p>1 A It's common practice, just to let you know how</p> <p>2 the industry works, to try to use as much as possible</p> <p>3 whatever you can find at the site. So I cannot discount</p> <p>4 it because those are normal practices. But I'm not an</p> <p>5 engineer. I'm not an expert in construction, so --</p> <p>6 <b>Q So were you ever made aware that the United</b></p> <p>7 <b>States -- like, in October 2014, did anyone from your team</b></p> <p>8 <b>make you aware that the United States, through one of its</b></p> <p>9 <b>agencies, had requested that excavations at the Osage Wind</b></p> <p>10 <b>project cease until the permitting issue could be</b></p> <p>11 <b>resolved?</b></p> <p>12 A I'm assuming that you're referring to the email</p> <p>13 from Mr. Post.</p> <p>14 <b>Q I am first referencing the last paragraph of</b></p> <p>15 <b>this letter where the United States specifically directs</b></p> <p>16 <b>you to refrain from any further excavation of minerals</b></p> <p>17 <b>until a permit has been obtained.</b></p> <p>18 A You're referring to this paragraph, but what's</p> <p>19 the question?</p> <p>20 <b>Q Were you -- were you made aware of this</b></p> <p>21 <b>directive, this position of the United States in the --</b></p> <p>22 <b>around October 2014?</b></p> <p>23 A Again, I'm sure that there was some form of</p> <p>24 communication. We know there was an email from David Post</p> <p>25 regarding the project, so --</p>	<p>Page 93</p> <p>1 <b>request?</b></p> <p>2 A I cannot recall exactly, but, again, I was the</p> <p>3 country manager, and the engineering and construction unit</p> <p>4 was reporting directly to Rome, was not under my direct</p> <p>5 management in the United States, and this is because the</p> <p>6 engineering and construction is essentially managed</p> <p>7 globally, again, by a central unit to create synergies and</p> <p>8 reduce cost. So I had the power to sign a change order,</p> <p>9 but engineering and construction as a unit, the project</p> <p>10 managers had the full right to sign it without my</p> <p>11 approval. Eventually, they asked for approval to --</p> <p>12 <b>Q Okay.</b></p> <p>13 A In this case, I'm not sure if this change order</p> <p>14 was signed by the country manager or engineering and</p> <p>15 construction. Probably directly by engineering and</p> <p>16 construction, but, again, it depended. It depended very</p> <p>17 much on the specifics, what the transition was.</p> <p>18 <b>Q I believe --</b></p> <p>19 MS. FAIN: Julie, can you scroll down.</p> <p>20 <b>Q (BY MS. FAIN) I believe -- let's see. I</b></p> <p>21 <b>believe -- here we go. It was --</b></p> <p>22 A Engineering and construction directly. All the</p> <p>23 names here, Price, Rossini, Magrini, they're all people</p> <p>24 working in engineering and construction. Magrini actually</p> <p>25 is the head of engineering and construction worldwide for</p>



<p>Page 94</p> <p>1 Enel.</p> <p>2 <b>Q Okay. And can you talk to us or describe to us</b></p> <p>3 <b>what the change order request process is or how it works?</b></p> <p>4 A Specifically, there are different change orders,</p> <p>5 so I would have to try to figure out which one is the</p> <p>6 procedure they're referring to. Most of the time it's</p> <p>7 when you have a change in the quantity of a specific task</p> <p>8 that was budgeted in a project. But that's very much on</p> <p>9 the situation.</p> <p>10 So there are tons of different change order</p> <p>11 requests that can be managed. It's usually a process that</p> <p>12 is managed between engineering and procurement. So I</p> <p>13 cannot help you very much in the -- in the details.</p> <p>14 <b>Q No, that's helpful, and that was what we were,</b></p> <p>15 <b>you know, trying to better understand. Do you -- is there</b></p> <p>16 <b>ever a time that you recall denying or directing someone</b></p> <p>17 <b>else to deny a change order request that you received on</b></p> <p>18 <b>this project?</b></p> <p>19 A No. No.</p> <p>20 <b>Q Okay. Let's see. So in the -- in this</b></p> <p>21 <b>document, in the explanatory note that's on the Bates</b></p> <p>22 <b>stamped page 19013, there's a section that says, "The</b></p> <p>23 <b>decision process for rock crushing was driven by the</b></p> <p>24 <b>following conditions." It's at the top of this page.</b></p> <p>25 <b>Do you see that?</b></p> <p>Page 95</p> <p>1 A Uh-huh.</p> <p>2 <b>Q Okay. And the change order states, "Given the</b></p> <p>3 <b>issue with the Osage Nation, the disposal of excavated</b></p> <p>4 <b>rocks and import of backfilling materials from outside the</b></p> <p>5 <b>county was a more expensive solution."</b></p> <p>6 <b>Do you see that?</b></p> <p>7 A No.</p> <p>8 <b>Q Let's see. It's the middle of the page. It's</b></p> <p>9 <b>the third bullet point under -- under "decision process</b></p> <p>10 <b>for rock crushing".</b></p> <p>11 A Okay.</p> <p>12 (The witness reads to himself.)</p> <p>13 Okay.</p> <p>14 <b>Q Okay. And then right above that, the sentence</b></p> <p>15 <b>right above that, it says "given the issue with the Osage</b></p> <p>16 <b>Nation".</b></p> <p>17 A Uh-huh.</p> <p>18 <b>Q Did you -- at this time, is it accurate to say</b></p> <p>19 <b>you were there, that you would have been aware of an issue</b></p> <p>20 <b>with the Osage Nation?</b></p> <p>21 A I'm not sure I understand the question. You're</p> <p>22 telling me -- you're asking me if I was aware about an</p> <p>23 issue with the Osage Nation in</p> <p>24 December 2000-and-whatever-it-was?</p> <p>25 <b>Q 2014.</b></p>	<p>Page 96</p> <p>1 A 2014. I don't know. I could.</p> <p>2 <b>Q Okay.</b></p> <p>3 A I mean, I -- I -- I knew, generally speaking,</p> <p>4 that would -- that would not be correct, no. I didn't</p> <p>5 know generally speaking of all the projects that were</p> <p>6 under construction, no. I -- with the Osage -- with this</p> <p>7 project, there's been decently long history, so I cannot</p> <p>8 discount the fact that probably I was aware of the fact</p> <p>9 that there was an issue.</p> <p>10 <b>Q Okay. And in the fifth bullet point, so a</b></p> <p>11 <b>couple down from where we were, it talks about</b></p> <p>12 <b>importing -- it states that, "Importing material was also</b></p> <p>13 <b>not advised by EGPNA legal department because it would</b></p> <p>14 <b>have given credit to Osage Nation's theory on the</b></p> <p>15 <b>commercial use of soil and, therefore, abandoned."</b></p> <p>16 <b>Do you see that?</b></p> <p>17 A Yeah. I thought that's the one we were reading.</p> <p>18 <b>Q Yeah. It's right under the initial given --</b></p> <p>19 A I was reading that one. You were reading the</p> <p>20 one up above.</p> <p>21 <b>Q Well, we'll meet in the middle.</b></p> <p>22 A Okay.</p> <p>23 <b>Q Okay. So it's -- do you know who from the EGPNA</b></p> <p>24 <b>legal department would have been likely to communicate</b></p> <p>25 <b>that message?</b></p> <p>Page 97</p> <p>1 A Steve Champagne would be the one to blame,</p> <p>2 but -- he was -- he's the head of the legal department,</p> <p>3 but I couldn't know who the legal counsel at the time was</p> <p>4 really dealing specifically with this issue.</p> <p>5 <b>Q Did you share the view that importing material</b></p> <p>6 <b>was not advisable because it would, quote, unquote,</b></p> <p>7 <b>"credit the Osage Nation's theory"?</b></p> <p>8 A What do you mean "share the view"?</p> <p>9 <b>Q Did you agree with that position that the --</b></p> <p>10 <b>that was provided by the Enel Green Power legal</b></p> <p>11 <b>department?</b></p> <p>12 A I don't agree. I don't know enough to give you</p> <p>13 an opinion. I mean, the only thing I know is that we're</p> <p>14 very -- I mean, essentially, we try to do our best to be</p> <p>15 the best neighbors to whoever is in the projects that we</p> <p>16 develop. I mean, we need to stay there for 20 years,</p> <p>17 sometimes even 30. It's our objective to be as, you know,</p> <p>18 obeying to the law and good neighbors as much as we</p> <p>19 possibly can. So my assumption is that here the legal</p> <p>20 department did, as usual, the best they could to obey the</p> <p>21 law.</p> <p>22 <b>Q At the time that this order was approved by Bill</b></p> <p>23 <b>Price, and I understand that your role had changed, but</b></p> <p>24 <b>around December 9, 2014, were you still receiving updates</b></p> <p>25 <b>on the status of issues with the Osage Nation?</b></p>
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<p>Page 98</p> <p>1 A No. We -- sorry. No. It just -- the month of</p> <p>2 December is a very peculiar month because a lot of -- you</p> <p>3 know, you're getting to the end of the year, and a lot of</p> <p>4 projects need to be finished. So the way you follow all</p> <p>5 of this - I'm talking about hundreds of projects around</p> <p>6 the world - is you have an engineering and construction</p> <p>7 meeting where you go through the list and you try to</p> <p>8 understand how much they're costing as far as a delay,</p> <p>9 what can be done to expedite.</p> <p>10 But it's -- I mean, at that point, it's very</p> <p>11 difficult that you get into the level of detail that's</p> <p>12 going to tell you what the specific problem is and how to</p> <p>13 solve it. It's a, you know, 5,000 people organization.</p> <p>14 It would be impossible to do that for this many projects.</p> <p>15 MS. FAIN: Okay. Well, I -- that -- that wraps</p> <p>16 up the questions that I have planned right now. So we can</p> <p>17 either take a quick break, or I don't know if the U.S.</p> <p>18 is -- is -- wants to dive in. But whatever the -- however</p> <p>19 the group would prefer would be just fine.</p> <p>20 MR. ASHWORTH: We would divert to Mr. Venturini.</p> <p>21 If you'd like to move forward, I can start my questions</p> <p>22 and we can take a break later, or we can take a break now</p> <p>23 and I'll ask my questions and probably break later as</p> <p>24 well. So I don't think I -- go ahead.</p> <p>25 THE WITNESS: Sorry. Forgive me. We took a</p>	<p>Page 100</p> <p>1 want me to.</p> <p>2 Q No, that's fine.</p> <p>3 MR. McCORMACK: We don't -- we don't need to see</p> <p>4 that.</p> <p>5 THE WITNESS: I don't know.</p> <p>6 MR. McCORMACK: But appreciate it.</p> <p>7 Q (BY MS. FAIN) Sir, when you said that you were</p> <p>8 in the main meeting room for Enel X, is that -- where is</p> <p>9 that located at? Is that in Rome?</p> <p>10 A Yes, it's in Rome.</p> <p>11 Q Okay. During your deposition, have you had any</p> <p>12 access to any documents that you, you know, have pulled up</p> <p>13 or been reviewing?</p> <p>14 A No.</p> <p>15 Q Okay. Have you had access to any messaging -</p> <p>16 emails, text messages - during your deposition so far?</p> <p>17 A No, except one from my mother.</p> <p>18 Q Okay. Sir, earlier you testified, you said it</p> <p>19 was -- I believe you said it was a common practice to use</p> <p>20 minerals that were on site for construction projects. Is</p> <p>21 that correct?</p> <p>22 A Can you repeat that?</p> <p>23 MR. McCORMACK: What -- what -- I'm going to</p> <p>24 object to the --</p> <p>25 Q (BY MR. ASHWORTH) Sure. I believe --</p>
<p>Page 99</p> <p>1 break 20 minutes ago, so I think that we can move on, if</p> <p>2 you guys are --</p> <p>3 MR. McCORMACK: That's fine with me, too.</p> <p>4 MR. ASHWORTH: And I don't think I have too much</p> <p>5 questions to ask, but we'll go ahead and get started.</p> <p>6 CROSS-EXAMINATION</p> <p>7 BY MR. ASHWORTH:</p> <p>8 Q Sir, my name is Stuart Ashworth, and I'm with</p> <p>9 the U.S. And earlier in your deposition -- well, first</p> <p>10 off, is there anyone in the room with you currently?</p> <p>11 A Yeah.</p> <p>12 Q Who?</p> <p>13 MS. SAIZ: I'm here. Can you hear me?</p> <p>14 MR. McCORMACK: That's Beatrice, the one we</p> <p>15 identified as we started the deposition.</p> <p>16 MR. ASHWORTH: Okay.</p> <p>17 MR. McCORMACK: She's a lawyer from Enel.</p> <p>18 Q (BY MR. ASHWORTH) Sir, has there been anyone</p> <p>19 other than Beatrice in your room?</p> <p>20 A No. I can turn the computer around to show you.</p> <p>21 I mean, I'm in the main meeting room in Enel X, and it's</p> <p>22 just me and her.</p> <p>23 Q Okay. And when you say the -- when you say the</p> <p>24 --</p> <p>25 A I can turn it -- I can turn it around if you</p>	<p>Page 101</p> <p>1 MR. McCORMACK: Go ahead. Sorry. Go ahead.</p> <p>2 Q (BY MR. ASHWORTH) Sure. I believe, sir, you</p> <p>3 testified that it was a common practice to use minerals or</p> <p>4 materials that are on site during construction projects.</p> <p>5 Is that correct?</p> <p>6 MR. McCORMACK: I'm going to object to the form</p> <p>7 of the question as assuming facts not in evidence,</p> <p>8 mischaracterizing the testimony, and as having legal</p> <p>9 conclusions involved.</p> <p>10 But you can answer the question.</p> <p>11 A Okay. First of all, sorry, but there is a</p> <p>12 little echo, so I will have to ask you to repeat the</p> <p>13 question probably several times.</p> <p>14 What I meant was since there was a reference to</p> <p>15 try to reduce cost, it was not -- it's common practice</p> <p>16 that when you have a project, that you try to use as much</p> <p>17 as can you whenever it's available. I'll give you an</p> <p>18 example. If there is a village close by, you try to --</p> <p>19 since you're talking about very often thousands of people,</p> <p>20 you try to use whatever is available at the village to</p> <p>21 support those thousands of people. If there is no</p> <p>22 village, then you need to try to pose a deal with the land</p> <p>23 owners to have, you know, support during the construction</p> <p>24 and so on.</p> <p>25 So the -- what I meant was trying to optimize</p>

<p style="text-align: right;">Page 102</p> <p>1 whatever is around, especially when you're talking about</p> <p>2 projects that are - forgive me for the expression - in the</p> <p>3 middle of nowhere, essentially.</p> <p>4 <b>Q (BY MR. ASHWORTH) Okay. Sir, in that desire to</b></p> <p>5 <b>use materials that are nearby, is that driven by the</b></p> <p>6 <b>desire to save money?</b></p> <p>7 A No. First of all, if we use something where the</p> <p>8 project is, you need to have the permits to do it, and</p> <p>9 this is true for everything that you do. So cost is a</p> <p>10 driver always with -- always, but, I mean, for us, cost</p> <p>11 was with permitting. If you don't have the permit, you</p> <p>12 cannot use whatever is available.</p> <p>13 <b>Q Okay. So is it your belief that in order to use</b></p> <p>14 <b>materials on site, you would need permission or a permit</b></p> <p>15 <b>to use those materials? Is that correct?</b></p> <p>16 MR. McCORMACK: Wait a minute. Wait, wait,</p> <p>17 wait. Object to the form of the question. Argumentative.</p> <p>18 Assumes facts not in evidence. Seeks a legal conclusion.</p> <p>19 But you can answer the question.</p> <p>20 A Can you repeat the question at this point?</p> <p>21 Because I forgot the question.</p> <p>22 MR. ASHWORTH: Sure.</p> <p>23 Court reporter, could you please reask that</p> <p>24 question for me?</p> <p>25 THE REPORTER: Yes.</p>	<p style="text-align: right;">Page 104</p> <p>1 evidence. Calls for a legal conclusion. And</p> <p>2 mischaracterizes prior testimony.</p> <p>3 But you can answer the question.</p> <p>4 A You are -- I think that you are asking the wrong</p> <p>5 person. I mean, you should ask the engineering and</p> <p>6 construction team because I'm not an expert in</p> <p>7 construction. What I meant during the testimony was we</p> <p>8 are trying to optimize a big -- whatever is done to build</p> <p>9 a wind project. I was specifically referring, for</p> <p>10 example, to food, entertainment for the people, lodging</p> <p>11 for the people and all this kind of stuff. But I cannot</p> <p>12 discount that in specific parts of the world, material</p> <p>13 present, material on site is also utilized.</p> <p>14 But, again, you're asking the wrong person. I'm</p> <p>15 not expert in the engineering and construction. I've been</p> <p>16 on --</p> <p>17 <b>Q (BY MR. ASHWORTH) Okay.</b></p> <p>18 A -- the site three, four times in my life.</p> <p>19 <b>Q Sure. You under -- scratch that.</b></p> <p>20 <b>Would you agree that if you were to not use</b></p> <p>21 <b>materials that came from the site, you had to obtain</b></p> <p>22 <b>materials off site, that you would pay for those</b></p> <p>23 <b>materials? Is that correct?</b></p> <p>24 A It depends on the material. I mean, some</p> <p>25 materials --</p>
<p style="text-align: right;">Page 103</p> <p>1 (The requested portion is read back by the</p> <p>2 reporter.)</p> <p>3 MR. McCORMACK: And I would repeat -- I would</p> <p>4 repeat my objections. Argumentative. Seeks a legal</p> <p>5 conclusion. Assumes facts not in evidence.</p> <p>6 But you can answer the question.</p> <p>7 A I would assume that there is an assessment about</p> <p>8 what material we're talking about, and if it says that a</p> <p>9 permit is required, then we would acquire the permit.</p> <p>10 <b>Q (BY MR. ASHWORTH) Okay. So my question, or at</b></p> <p>11 <b>least your previous testimony, is that if there's</b></p> <p>12 <b>materials on site, you would use those if you had</b></p> <p>13 <b>permission or a permit. I believe that was your</b></p> <p>14 <b>testimony. Is that not your testimony?</b></p> <p>15 A I'm not sure I understand your question. I</p> <p>16 mean, you're asking me --</p> <p>17 <b>Q Okay.</b></p> <p>18 A All right.</p> <p>19 <b>Q Sure. Would it be kind of -- I guess I'll start</b></p> <p>20 <b>back to the beginning of my -- this line of questioning.</b></p> <p>21 <b>Would it be -- would it be common for Enel Green Power</b></p> <p>22 <b>North America to use materials on site? By "materials",</b></p> <p>23 <b>I'm referring to minerals.</b></p> <p>24 MR. McCORMACK: Whoa, whoa, whoa, whoa, whoa.</p> <p>25 Object to the form of the question. Assumes facts not in</p>	<p style="text-align: right;">Page 105</p> <p>1 <b>Q Okay.</b></p> <p>2 A Some materials you just pay for transport</p> <p>3 because some people just want to get rid of it.</p> <p>4 <b>Q Okay. Are you aware that Bill Moskaluk, who was</b></p> <p>5 <b>the site manager for Enel-EGPNA on the Osage Wind project,</b></p> <p>6 <b>testified during his deposition that Enel saved</b></p> <p>7 <b>approximately \$1.7 million by using the materials that</b></p> <p>8 <b>they excavated from the site instead of purchasing those</b></p> <p>9 <b>materials from off site? Are you aware that he testified</b></p> <p>10 <b>about that?</b></p> <p>11 MR. McCORMACK: Wait, wait, wait. Object to the</p> <p>12 form of the question. Assumes facts not in evidence.</p> <p>13 But you can answer the question.</p> <p>14 A No. I have no idea because I have no idea what</p> <p>15 the other people from Enel testified.</p> <p>16 <b>Q (BY MR. ASHWORTH) Would that surprise you that</b></p> <p>17 <b>using products -- I'm sorry, using minerals on site would</b></p> <p>18 <b>realize a cost savings into the millions of dollars for</b></p> <p>19 <b>Enel on a particular -- on any given wind construction</b></p> <p>20 <b>project?</b></p> <p>21 MR. McCORMACK: Wait. Object to the form of the</p> <p>22 question. Mischaracterizes the evidence. Misstates prior</p> <p>23 testimony.</p> <p>24 But you can answer the question.</p> <p>25 A I don't understand why it would surprise me.</p>

<p>Page 106</p> <p>1 <b>Q (BY MR. ASHWORTH) And as CEO of EGPNA, it would</b></p> <p>2 <b>be your goal, at least to the stakeholders, that cost</b></p> <p>3 <b>savings would be a top priority for wind project</b></p> <p>4 <b>constructions. Is that correct?</b></p> <p>5 A One of the top priorities, or the top priority?</p> <p>6 They're different.</p> <p>7 <b>Q A priority.</b></p> <p>8 A A priority. It's a priority.</p> <p>9 <b>Q I'm sorry. Did you say yes?</b></p> <p>10 A Yes. It's a priority together with others, yes.</p> <p>11 I'm sorry.</p> <p>12 <b>Q Okay. Are you aware that the minerals that were</b></p> <p>13 <b>excavated and used in the project, one of the reasons why</b></p> <p>14 <b>they were used in the project, the Osage Wind project, was</b></p> <p>15 <b>for use of structural support of the wind towers?</b></p> <p>16 MR. McCORMACK: Wait, wait. Object to the form</p> <p>17 of the question. Mischaracterizes the facts.</p> <p>18 But you can answer the question.</p> <p>19 A I am aware today, because talking to my legal</p> <p>20 counsel --</p> <p>21 MR. McCORMACK: Don't talk about what you talked</p> <p>22 to me about.</p> <p>23 THE WITNESS: All right.</p> <p>24 A So I was made aware of the fact that we used</p> <p>25 them, but honestly speaking, until a few days back, I had</p>	<p>Page 108</p> <p>1 are extremely careful when we build projects. We need to</p> <p>2 stay there for 20, 30 years, so we try to make sure that</p> <p>3 everyone is happy with what we are doing. It's extremely</p> <p>4 painful to stay in 20, 30 years in a place where people</p> <p>5 don't like you. So we, generally speaking, try to avoid</p> <p>6 it.</p> <p>7 <b>Q Do you know of any efforts that Enel did to</b></p> <p>8 <b>obtain permission to use the minerals that were excavated</b></p> <p>9 <b>during the Osage Wind project?</b></p> <p>10 A What do you mean?</p> <p>11 <b>Q Well, we know that they -- we know that Enel did</b></p> <p>12 <b>not obtain permission to use the minerals. My question to</b></p> <p>13 <b>you would be are you aware of any efforts that anyone at</b></p> <p>14 <b>Enel Green Power North America did to obtain permission to</b></p> <p>15 <b>use those minerals?</b></p> <p>16 A No.</p> <p>17 <b>Q You're unaware of any efforts undertaken to</b></p> <p>18 <b>obtain permission?</b></p> <p>19 A I'm assuming the people tried, I -- but I'm --</p> <p>20 honestly speaking, don't know whom and how they did it and</p> <p>21 even if they did it.</p> <p>22 <b>Q Okay. Do you believe that someone at Enel</b></p> <p>23 <b>should have attempted to obtain permission to use minerals</b></p> <p>24 <b>that were excavated during the Osage Wind project?</b></p> <p>25 MR. McCORMACK: Wait. Object to the form of the</p>
<p>Page 107</p> <p>1 no recollection of was done with those - how should I call</p> <p>2 them - stones, mineral stones.</p> <p>3 <b>Q (BY MR. ASHWORTH) Okay. Are you aware that an</b></p> <p>4 <b>appellate court in the U.S. held specifically that Enel</b></p> <p>5 <b>was required to obtain a permit to use materials that were</b></p> <p>6 <b>excavated during the Osage Wind project?</b></p> <p>7 A No.</p> <p>8 MR. McCORMACK: So, wait. Actually, I think the</p> <p>9 court held about a mining license, a mining lease, but be</p> <p>10 that as it may. So I'm going to object to the form of the</p> <p>11 question as being inaccurate facts.</p> <p>12 But go ahead.</p> <p>13 A No.</p> <p>14 <b>Q (BY MR. ASHWORTH) As you sit here today, you're</b></p> <p>15 <b>unaware that an appellate court, specifically the Tenth</b></p> <p>16 <b>Circuit Court of Appeals, held that Enel Green Power North</b></p> <p>17 <b>America illegally used minerals that were excavated</b></p> <p>18 <b>without prior permission?</b></p> <p>19 A I was not aware of it.</p> <p>20 <b>Q Okay. Does that surprise you?</b></p> <p>21 A It does a bit.</p> <p>22 <b>Q Okay. Why does that surprise you?</b></p> <p>23 A Because we are very careful in the way we build</p> <p>24 our projects, so I'm surprised that, if there was a</p> <p>25 mistake -- well, I mean, mistakes are made, so -- but we</p>	<p>Page 109</p> <p>1 question. Argumentative. Assumes legal conclusions.</p> <p>2 But you can answer the question.</p> <p>3 THE WITNESS: Okay. Forgive me. Every time</p> <p>4 that you go with that sentence, then I forget exactly what</p> <p>5 the words of the questions are. Can you --</p> <p>6 MR. ASHWORTH: Court Reporter, do you mind</p> <p>7 restating my question?</p> <p>8 THE REPORTER: Sure.</p> <p>9 (The requested portion was is back by the</p> <p>10 reporter.)</p> <p>11 MR. McCORMACK: And I would repeat the</p> <p>12 objections as well for this question.</p> <p>13 A I do not have enough information to give you a</p> <p>14 straight answer. I mean, again, when you're talking about</p> <p>15 project like this one, you're talking about a lot of</p> <p>16 complexity, and there are tons of people involved and</p> <p>17 legal advisers. Nobody wants to be fired for, you know, a</p> <p>18 project that didn't go right, so everyone is trying to do</p> <p>19 their best. My assumption, especially in this case with a</p> <p>20 senior team in charge of portfolio projects in the United</p> <p>21 States and me being God only knows where at the time, I'm</p> <p>22 assuming that they made any possible effort to do it</p> <p>23 right.</p> <p>24 <b>Q (BY MR. ASHWORTH) So, I'm sorry. It's your</b></p> <p>25 <b>testimony that you're unaware if anyone made efforts to</b></p>

<p>Page 110</p> <p>1 obtain permission, but you assume someone did make</p> <p>2 efforts. Is that correct?</p> <p>3 MR. McCORMACK: Wait. Object to the form of the</p> <p>4 question. Mischaracterizes his testimony. Assumes facts</p> <p>5 not in evidence.</p> <p>6 But you can answer the question.</p> <p>7 A No, I said something different. I have not</p> <p>8 enough information about the situation of the project at</p> <p>9 the time to tell you if it's yes or no. So I can only</p> <p>10 assume that, again, if they thought it was something that</p> <p>11 was supposed to be done, they did it. We are talking</p> <p>12 about people with 30 years of experience in these fields.</p> <p>13 Q (BY MR. ASHWORTH) Sorry. Go ahead. I'm sorry</p> <p>14 if I cut you off.</p> <p>15 A No, I'm -- I'm -- they have 30 years of</p> <p>16 experience. We're talking about people who were the ones</p> <p>17 really starting the renewable air in the United States.</p> <p>18 So people with, you know, a level of seniority that I</p> <p>19 cannot even think about doubting. I don't have anything</p> <p>20 else to add. I mean, I'm sure that they tried, and</p> <p>21 hopefully they did the right thing.</p> <p>22 Q Okay. Whose responsibility would it be at Enel</p> <p>23 Green Power North America to make sure that the entity had</p> <p>24 permission to use minerals during a construction project?</p> <p>25 MR. McCORMACK: I'm sorry. In 2014 or 2013,</p>	<p>Page 112</p> <p>1 time. It's -- it was a team of four or five people. We</p> <p>2 named them more than once over the past three hours. I</p> <p>3 can repeat the names. Steve Champagne was the legal</p> <p>4 counsel, so he was definitely the one providing advice</p> <p>5 about if the permit was needed or not. Mike Storch and</p> <p>6 David Post were the people having done the development of</p> <p>7 the project, so all the due diligence and probably having</p> <p>8 dealt with all the issues happening until then. And then</p> <p>9 once the project goes on to the investment community, it</p> <p>10 was a matter of handing over the project to engineering</p> <p>11 and construction. I don't know exactly when the project</p> <p>12 was handed over to engineering and construction. At that</p> <p>13 point, engineering and construction would have had the</p> <p>14 last word. But knowing these guys and knowing how much</p> <p>15 they liked to work together, I'm sure that they, you know,</p> <p>16 together made the decision, and I'm sure that it was the</p> <p>17 decision that they thought was right at the moment.</p> <p>18 Q Okay. Would you have any duty to make sure that</p> <p>19 either Steve Champagne, Mike Storch, anyone at -- or</p> <p>20 everyone at -- underneath you were acting in accordance</p> <p>21 with all applicable federal regulations relative to the</p> <p>22 Osage Wind project?</p> <p>23 A As the CEO of this company -- sorry. As the CEO</p> <p>24 of that company, in the end, it was my responsibility.</p> <p>25 But the transition is such where you have, again -- Enel</p>
<p>Page 111</p> <p>1 some other time?</p> <p>2 MR. ASHWORTH: No. I stand on my question.</p> <p>3 A So I'm assuming that you're talking about</p> <p>4 related to this project?</p> <p>5 Q (BY MR. ASHWORTH) Yes.</p> <p>6 A Because this project is a very peculiar one and</p> <p>7 it is in a time when, again, my presence in the United</p> <p>8 States was extremely limited, so the -- the management</p> <p>9 team. We're talking about people, as I said, 30-plus</p> <p>10 years of experience focused on their specific targets.</p> <p>11 They were -- I would say I'm 99.9 percent sure that they</p> <p>12 were making collective decisions because I know them very</p> <p>13 well. At the end, usually when you are on the verge of</p> <p>14 construction - because my understanding is that this was</p> <p>15 the situation - or during construction, at that point, the</p> <p>16 project manager and actually the head of engineering and</p> <p>17 construction in the United States would have been the one</p> <p>18 mostly calling the shots. So they would be the one trying</p> <p>19 to figure out putting all the pieces together, if it was</p> <p>20 the time to -- a good time to -- if it was right or wrong</p> <p>21 to move ahead.</p> <p>22 Q Okay. Let me reask it this way. Who would</p> <p>23 ultimately be responsible for ensuring that permission was</p> <p>24 obtained to use minerals during the Osage Wind project?</p> <p>25 A I don't know what the transition was at the</p>	<p>Page 113</p> <p>1 Green Power is the -- in my opinion, one of the best</p> <p>2 energy companies out there, and because of its people,</p> <p>3 because of the fact of how we operate and how we are</p> <p>4 building long-term relationships with land owners and all</p> <p>5 the different stakeholders. So in the end, it's always</p> <p>6 the CEO's fault. Everybody knows. Specifically, in this</p> <p>7 case, I'm sure those guys in the United States decided</p> <p>8 based on facts, based on what they had, that that was the</p> <p>9 right decision to make to build the project.</p> <p>10 Q Okay. If -- going back to the Tenth Circuit</p> <p>11 Court of Appeals' opinion finding that EGPNA was required</p> <p>12 to get permission to use the minerals, if the Court had</p> <p>13 found EGPNA had done something wrong, would you expect to</p> <p>14 be informed about that decision?</p> <p>15 MR. McCORMACK: Object to the form of the</p> <p>16 question. It assumes facts not in evidence. It also is</p> <p>17 argumentative and is speculative.</p> <p>18 You can answer the question.</p> <p>19 MR. ASHWORTH: Yeah. I'm going to -- hold on.</p> <p>20 Listen. Listen, McCormack. You know that we reserve</p> <p>21 objections. I'm sorry. Objections in our circuit, as</p> <p>22 well as our district court, is object to the form of the</p> <p>23 question. Only when I ask you what that form objection is</p> <p>24 are you able then to tell me so that I can correct that</p> <p>25 for trial.</p>

<p>Page 114</p> <p>1 I'm going to ask you to refrain from inserting</p> <p>2 your speaking objections over form objections. If I ask</p> <p>3 you specifically what your form objections are, you can go</p> <p>4 ahead and tell me, but otherwise, keep that to yourself.</p> <p>5 MR. McCORMACK: I appreciate your advice. I've</p> <p>6 read my --</p> <p>7 MS. FAIN: It's not advice. I'm telling you</p> <p>8 that, this right now. I know that you have been pro hoc'd</p> <p>9 into this case. I know that you're not familiar with the</p> <p>10 Tenth Circuit, the Northern District of Oklahoma's local</p> <p>11 rules, but I would expect that you'd get familiar with</p> <p>12 those and then govern yourself accordingly.</p> <p>13 MR. McCORMACK: I am governing myself completely</p> <p>14 appropriately. I don't appreciate being called by my last</p> <p>15 name. I find that disrespectful, but I've suffered worse.</p> <p>16 I've read the cases in the Northern District of</p> <p>17 Oklahoma, and objecting to form and stating what the basis</p> <p>18 of the objection is is appropriate, and that's what I'm</p> <p>19 going to continue to do so. I appreciate your advice, and</p> <p>20 I'll follow my own counsel.</p> <p>21 MS. FAIN: It's only appropriate when I ask you</p> <p>22 what those form objections are.</p> <p>23 MR. McCORMACK: Okay. So --</p> <p>24 MS. FAIN: I assume that you're asking about the</p> <p>25 State Farm case.</p>	<p>Page 116</p> <p>1 you're going to stand, we're going to stop. We're going</p> <p>2 to call the judge right now.</p> <p>3 MR. McCORMACK: Okay. Call the judge.</p> <p>4 MR. ASHWORTH: Okay. Let's -- let's go off the</p> <p>5 record.</p> <p>6 THE VIDEOGRAPHER: We're off the record at</p> <p>7 10:50 a.m.</p> <p>8 (Break taken.)</p> <p>9 THE VIDEOGRAPHER: We are back on the record at</p> <p>10 11:51 a.m.</p> <p>11 <b>Q (BY MS. FAIN) Sir, let me reask the question or</b></p> <p>12 <b>rephrase the question that was pending before we went on</b></p> <p>13 <b>our break. If the Tenth Circuit Court of Appeals found</b></p> <p>14 <b>that EGPNA violated federal regulations by using minerals</b></p> <p>15 <b>without permission, would you have wanted to have known</b></p> <p>16 <b>about that?</b></p> <p>17 A I'm thinking. I mean, is that a -- I would not</p> <p>18 know the importance of the issue, honestly. So to try to</p> <p>19 understand what you want to know and what you don't want</p> <p>20 to know, you also need to understand the weight of</p> <p>21 information that you need to receive. My -- that's why</p> <p>22 you can trust your legal counsels to decide what's the</p> <p>23 information that you are supposed to be knowing. So I --</p> <p>24 how can you even -- how can I give you an answer not</p> <p>25 knowing the importance of the decision that is to be made,</p>
<p>Page 115</p> <p>1 MR. McCORMACK: I'm not going to argue with you,</p> <p>2 Counsel. You're familiar with what I do. I'm going to</p> <p>3 continue to do it. If you think I've done it wrong,</p> <p>4 then -- then okay. Then we have a good faith</p> <p>5 disagreement.</p> <p>6 So where were we?</p> <p>7 MR. ASHWORTH: Court Reporter, can you please</p> <p>8 reread -- reask my question? I had one pending.</p> <p>9 THE REPORTER: Yes. One second. Okay.</p> <p>10 (The requested portion is read back by the</p> <p>11 reporter.)</p> <p>12 MR. McCORMACK: Would you also please read by</p> <p>13 objections.</p> <p>14 MR. ASHWORTH: No. I'm going to say that the</p> <p>15 court reporter -- that's not necessary. Don't do it. I'm</p> <p>16 the one asking questions. The objections stand.</p> <p>17 You assert your objections for the purposes of</p> <p>18 preserving for the record. There's no need to reask it or</p> <p>19 restate it other than to somehow communicate something to</p> <p>20 the witness. Just completely inappropriate.</p> <p>21 MR. McCORMACK: Ms. Court Reporter, you're going</p> <p>22 to follow the statements of the counsel for the U.S., or</p> <p>23 are you going to do what I've asked you to do and read</p> <p>24 back my objection?</p> <p>25 MR. ASHWORTH: I'm going to say, if that's how</p>	<p>Page 117</p> <p>1 and honestly speaking, at the time, I have no idea.</p> <p>2 <b>Q Okay. So as CEO of EGPNA, you have no opinion</b></p> <p>3 <b>as to whether you would want to have known that the</b></p> <p>4 <b>company you're the CEO of violated federal regulations as</b></p> <p>5 <b>determined by the Tenth Circuit Court of Appeals in the</b></p> <p>6 <b>United States?</b></p> <p>7 MR. McCORMACK: Objection to the form of the</p> <p>8 question. It's inconsistent with his prior testimony.</p> <p>9 But you can answer the question.</p> <p>10 A I would have to -- again, I had a very strong</p> <p>11 team of people trying to decide what was important for me</p> <p>12 to know in regard of the specific project. It's not a</p> <p>13 matter of me wanting to know or not. I cannot in this</p> <p>14 circumstance today try to, you know, understand if that</p> <p>15 information would have been important to me to make a</p> <p>16 decision.</p> <p>17 I entrusted the team. They -- they -- they were</p> <p>18 the ones evaluating what was important for me to know and</p> <p>19 what not. Evidently, they thought it was not important or</p> <p>20 was not that relevant that they could decide it</p> <p>21 themselves.</p> <p>22 <b>Q As you sit here today, do you believe that you</b></p> <p>23 <b>would have known about this Tenth Circuit Court opinion</b></p> <p>24 <b>finding that EGPNA violated federal regulations?</b></p> <p>25 A You're asking me if I think today if it was</p>




<p>Page 118</p> <p>1 relevant information for me to know?</p> <p>2 <b>Q No. My question is, as you sit here today, do</b></p> <p>3 <b>you believe you should have known?</b></p> <p>4 MR. McCORMACK: Object to the form of the</p> <p>5 question. Calls for speculation.</p> <p>6 A I think it's a little speculative to try to</p> <p>7 judge it now, I mean, looking at where we are. But I</p> <p>8 don't think that I would have made a better decision than</p> <p>9 was made at the time. I mean, there were tons of people</p> <p>10 looking at this and they collectively decided to proceed,</p> <p>11 which means they really believed in the fact that they</p> <p>12 were on the right side of the fence.</p> <p>13 <b>Q (BY MR. ASHWORTH) I'm asking -- the question I</b></p> <p>14 <b>asked was, as you sit here today, do you now believe that</b></p> <p>15 <b>you should have known about the Tenth Circuit opinion?</b></p> <p>16 A No. It doesn't matter because I would not have</p> <p>17 been able to provide a knowledgeable input into what was</p> <p>18 going on. That's why you have management with you,</p> <p>19 because they're supposed to, you know, understand what's</p> <p>20 going on and make the right decision. What kind of input</p> <p>21 I would have given to them? I mean, they would have been</p> <p>22 the ones knowing exactly what was going on and deciding.</p> <p>23 It's not that the CEO knows everything. He knows very</p> <p>24 little very often, unfortunately.</p> <p>25 <b>Q Okay. As CEO of a company, do you believe that</b></p>	<p>Page 120</p> <p>1 But you can proceed.</p> <p>2 A I -- it -- the -- you're in a -- when you're in</p> <p>3 a big company, you have, again, a management team deciding</p> <p>4 how to handle different things. Probably at the time they</p> <p>5 thought that there was not something relevant for me to</p> <p>6 know because they were handling the issue on a project</p> <p>7 level. Should I have been told that there was something</p> <p>8 going on with the project? Probably, actually. I don't</p> <p>9 know. Maybe they even told me, but they probably also</p> <p>10 told me that they were handling it. I cannot recall</p> <p>11 exactly the situation.</p> <p>12 Hundreds of projects around the world. I don't</p> <p>13 want to dismiss this one as not important, but a lot of</p> <p>14 decisions are made at project level.</p> <p>15 <b>Q Okay. As CEO of a company, would you care</b></p> <p>16 <b>whether or not federal regulations are being violated by</b></p> <p>17 <b>the company?</b></p> <p>18 A I feel like it's the same question. Obviously,</p> <p>19 I want to make sure that we are not violating the law. I</p> <p>20 mean, I said it more than once. Our objective is to stay</p> <p>21 in a place for several decades. We don't want to violate</p> <p>22 the law. It doesn't make any sense to do it. So, yes, I</p> <p>23 did, but at the same time, I have an international legal</p> <p>24 team taking care of these things. And, again, if they</p> <p>25 thought it was not important, it was not relevant, or even</p>
<p>Page 119</p> <p>1 <b>that's not important that you know if your company you're</b></p> <p>2 <b>CEO of is violating federal regulations?</b></p> <p>3 MR. McCORMACK: I'm going to object to that</p> <p>4 question as being argumentative and inconsistent with the</p> <p>5 prior testimony about when he was CEO.</p> <p>6 But with those provisors, go ahead.</p> <p>7 A I don't think anybody thought there was a</p> <p>8 federal violation. I mean, do you see somebody coming to</p> <p>9 me and saying, hey, we are violating the federal</p> <p>10 regulation, what do you think, we should go ahead or stop?</p> <p>11 I mean, that's not what happens, right? I mean, people</p> <p>12 are thinking they're on the right path and doing the right</p> <p>13 thing. I'm not sure exactly what -- what answer to your</p> <p>14 question.</p> <p>15 <b>Q Fair enough. Well, the Tenth Circuit has</b></p> <p>16 <b>already found that EGPNA has violated federal regulations.</b></p> <p>17 <b>My question would be, as CEO, is that something you would</b></p> <p>18 <b>want to be apprised of or to be made aware of, and it</b></p> <p>19 <b>seems to me that your testimony is, as CEO, you don't</b></p> <p>20 <b>think it's something that you should have been made aware</b></p> <p>21 <b>of. Is that correct?</b></p> <p>22 MR. McCORMACK: Wait. Let me -- object to the</p> <p>23 form of the question. It's inconsistent with his prior</p> <p>24 testimony about when he was CEO and assumes facts not in</p> <p>25 evidence.</p>	<p>Page 121</p> <p>1 they informed me, they informed me but not making me aware</p> <p>2 of the fact that I had to worry about it, I mean, that was</p> <p>3 up to them. Again, project team; legal team on project</p> <p>4 level.</p> <p>5 <b>Q If EGPNA was found to have violated federal</b></p> <p>6 <b>regulations, is that something that would have been</b></p> <p>7 <b>addressed with the Board of Directors for EGPNA?</b></p> <p>8 A I don't know. It depends on the kind of</p> <p>9 violation. It depends how the legal team would have</p> <p>10 assessed the kind of violation.</p> <p>11 <b>Q Do you know if the Tenth Circuit Court of</b></p> <p>12 <b>opinion regarding the Osage Wind project was brought up</b></p> <p>13 <b>with the Board of Directors for EGPNA?</b></p> <p>14 A When was the -- when did this happen? Because</p> <p>15 I'm not even sure about the date. When was the decision</p> <p>16 made?</p> <p>17 <b>Q One second. 2017.</b></p> <p>18 MR. McCORMACK: I think September of 2017, if</p> <p>19 I'm not mistaken, Counsel.</p> <p>20 A I wasn't even in EGP anymore. I had left, as I</p> <p>21 said in the very beginning. May 2017, I moved in to be</p> <p>22 the CEO of Enel X, so there was a completely different</p> <p>23 management team at the time. So, no, I'm not aware of</p> <p>24 anything because it was not, if you will, my problem at</p> <p>25 that point.</p>



<p style="text-align: right;">Page 122</p> <p>1 <b>Q (BY MR. ASHWORTH) Okay. Whose problem would it</b></p> <p>2 <b>have been?</b></p> <p>3 A It depends on how you think that the issue was</p> <p>4 relevant. It would have been a problem of the legal</p> <p>5 department in Enel. Having -- the project had been built</p> <p>6 at that point, so it was a matter of -- it was a legal</p> <p>7 issue more than anything else. So I'm assuming that it</p> <p>8 was managed directly by the legal department.</p> <p>9 <b>Q Okay. I'm going to pull up an exhibit that was</b></p> <p>10 <b>previously marked in this case as Exhibit Number 85. As</b></p> <p>11 <b>we're getting this pulled up, earlier in the deposition, I</b></p> <p>12 <b>believe you indicated to Ms. Fain that the letter</b></p> <p>13 <b>addressed to you by Robin Phillips, that you don't</b></p> <p>14 <b>recall -- that you don't believe it was forwarded to you.</b></p> <p>15 I would indicate -- so this is a -- can you see</p> <p>16 this letter, this email in front of you --</p> <p>17 A Yeah.</p> <p>18 <b>Q -- on the screen?</b></p> <p>19 (Off-the-record discussion.)</p> <p>20 <b>Q (BY MR. ASHWORTH) This is a letter from David</b></p> <p>21 <b>Post to you, and this was October 16, 2014, and there's an</b></p> <p>22 <b>enclosure here. And I'll represent to you that this</b></p> <p>23 <b>enclosure is the letter that Ms. Fain had previously</b></p> <p>24 <b>entered into -- or showed you from Robin Phillips.</b></p> <p>25 A Okay.</p>	<p style="text-align: right;">Page 124</p> <p>1 <b>the project pending Enel getting a permit for the</b></p> <p>2 <b>minerals. You would have been aware of that letter in</b></p> <p>3 <b>October 2014. Is that correct?</b></p> <p>4 A I'm assuming so. This is what the email is</p> <p>5 talking about, yes.</p> <p>6 <b>Q Okay. Have you ever been aware of an instance</b></p> <p>7 <b>during a wind project where a government entity directed</b></p> <p>8 <b>Enel to stop construction?</b></p> <p>9 A Not that I recall, but, I mean, I cannot</p> <p>10 discount the fact that probably there was, there were</p> <p>11 cases in the past. I have no idea. I'm talking about</p> <p>12 worldwide. I mean, the situation is very much depending</p> <p>13 on the country.</p> <p>14 <b>Q Are you aware of any instances where there was a</b></p> <p>15 <b>letter from a government entity directing Enel to stop</b></p> <p>16 <b>construction but Enel refused to stop and continued</b></p> <p>17 <b>construction? Are you ever aware of a situation like</b></p> <p>18 <b>that?</b></p> <p>19 A Again, not that I remember.</p> <p>20 <b>Q Okay. In this letter -- well, first off, was</b></p> <p>21 <b>there anything in this letter that you disagreed with that</b></p> <p>22 <b>was different from your -- any memory that you may have</b></p> <p>23 <b>had regarding the project?</b></p> <p>24 MR. McCORMACK: Counsel, I'm sorry. For</p> <p>25 clarification, are you referring to the letter that is an</p>
<p style="text-align: right;">Page 123</p> <p>1 <b>Q Do you recall seeing this email?</b></p> <p>2 MR. McCORMACK: Counsel, could you -- could you</p> <p>3 -- excuse me, Counsel, could you make that larger? I</p> <p>4 can't see it.</p> <p>5 MR. ASHWORTH: Is that good?</p> <p>6 MR. McCORMACK: Yeah. That's better. Thank</p> <p>7 you.</p> <p>8 A I couldn't recall the email, obviously, until a</p> <p>9 few days back, then it was given to me to look at by my</p> <p>10 legal counsel, yes.</p> <p>11 <b>Q (BY MR. ASHWORTH) Okay. What documents have you</b></p> <p>12 <b>reviewed to prepare for your deposition?</b></p> <p>13 A Actually, this email and the letter that you're</p> <p>14 talking about.</p> <p>15 <b>Q The letter and this email. Is that correct?</b></p> <p>16 A Yes, correct.</p> <p>17 <b>Q What other documents have you reviewed to</b></p> <p>18 <b>prepare for your deposition?</b></p> <p>19 A I said it. The letter. The letter attached to</p> <p>20 this email, and this email.</p> <p>21 <b>Q And no other documents. Is that correct?</b></p> <p>22 A No other documents, no.</p> <p>23 <b>Q Okay. So you would have been aware of the</b></p> <p>24 <b>letter from Robin Phillips at the BIA, Bureau of Indian</b></p> <p>25 <b>Affairs, to Enel asking or directing Enel to stop work on</b></p>	<p style="text-align: right;">Page 125</p> <p>1 attachment to this email or are you referring to the</p> <p>2 email?</p> <p>3 MR. ASHWORTH: I'm sorry. The letter. Sorry.</p> <p>4 I'm sorry. This exhibit, excluding the letter.</p> <p>5 MR. McCORMACK: So the email.</p> <p>6 A So I'm not sure I understand the question. You</p> <p>7 are asking me again if I remember this email or not? I</p> <p>8 mean, can you repeat?</p> <p>9 <b>Q (BY MR. ASHWORTH) Sure. When you reviewed this</b></p> <p>10 <b>email, this exhibit to prepare for your deposition, was</b></p> <p>11 <b>there anything in this exhibit that you disagreed with?</b></p> <p>12 A If I disagreed about something that was written</p> <p>13 in this email?</p> <p>14 <b>Q That's correct.</b></p> <p>15 A What do you mean by disagreeing?</p> <p>16 <b>Q That you believe was incorrect.</b></p> <p>17 A I have no idea. I mean, first of all, it's very</p> <p>18 difficult to remember what I thought at the time. As I</p> <p>19 said, I was miles away. I -- it's very difficult for me</p> <p>20 to disagree about something that is very -- that is just</p> <p>21 informative. They're telling me that there is a -- we can</p> <p>22 read it together, a sandy soil permit issue that nobody</p> <p>23 was aware of until last week and that they're trying to</p> <p>24 figure out what this whole thing is about. This is what</p> <p>25 I -- how -- the way I interpret the email.</p>

<p>Page 126</p> <p>1 <b>Q Okay.</b></p> <p>2 A But I don't know. What can I agree or disagree</p> <p>3 about? It's just information.</p> <p>4 <b>Q You had testified, I believe, earlier that you</b></p> <p>5 <b>would have relied upon the research or the opinions of</b></p> <p>6 <b>your in-house counsel regarding whether a permit was</b></p> <p>7 <b>needed or not for a particular project. Is that correct?</b></p> <p>8 A I would say -- more than the legal counsel, I</p> <p>9 would say the team working on the project, yes.</p> <p>10 Obviously, the legal counsel is an important piece of it.</p> <p>11 <b>Q Okay. Are you aware whether or not either</b></p> <p>12 <b>in-house counsel or your Enel team that you referred to</b></p> <p>13 <b>did any independent research as to whether a permit was</b></p> <p>14 <b>necessary to use minerals during the Osage Wind project?</b></p> <p>15 A I have no idea.</p> <p>16 <b>Q I'm sorry. You have no idea. Was that your --</b></p> <p>17 <b>was that your answer?</b></p> <p>18 A Yeah. I can assume that they did everything the</p> <p>19 way they wanted, that they needed to, but, I mean, if they</p> <p>20 specifically looked for a sandy soil permit at the time, I</p> <p>21 have no idea.</p> <p>22 MR. ASHWORTH: Okay. Let's take a five minute</p> <p>23 break. I'm almost done with my questions. I'm going do</p> <p>24 go over my notes real quick.</p> <p>25 MR. McCORMACK: Sure.</p> <p>Page 127</p> <p>1 THE VIDEOGRAPHER: We're off the record at</p> <p>2 12:09 p.m.</p> <p>3 (Break taken.)</p> <p>4 THE VIDEOGRAPHER: We're back on the record at</p> <p>5 12:14 p.m.</p> <p>6 MR. ASHWORTH: We pass the witness. We have no</p> <p>7 further questions.</p> <p>8 MR. McCORMACK: I have no further questions for</p> <p>9 this witness. We reserve them all for trial.</p> <p>10 Thanks very much, everyone.</p> <p>11 THE VIDEOGRAPHER: This concludes the videotaped</p> <p>12 deposition of Francesco Venturini. We're off the record</p> <p>13 at 12:14 p.m.</p> <p>14 (DEPOSITION CONCLUDED AT 12:14 P.M.)</p>	<p>Page 128</p> <p>1 ERRATA SHEET</p> <p>2 THE UNITED STATES OF AMERICA, et al. v. OSAGE WIND, LLC,</p> <p>3 et al.</p> <p>4 DEPOSITION OF FRANCESCO VENTURINI</p> <p>5 REPORTED BY: KARLI DANIELS, CSR, RPR, CCR</p> <p>6 DATE DEPOSITION TAKEN: SEPTEMBER 13, 2021</p> <p>7 JOB NO. 152609</p> <p>8 PAGE LINE IS SHOULD BE</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p> <p>Page 129</p> <p>1 JURAT</p> <p>2 THE UNITED STATES OF AMERICA, et al. v. OSAGE WIND, LLC,</p> <p>3 et al.</p> <p>4 I, Francesco Venturini, do hereby state under</p> <p>5 oath that I have read the above and foregoing deposition</p> <p>6 in its entirety and that the same is a full, true and</p> <p>7 correct transcription of my testimony so given at said</p> <p>8 time and place.</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 Signature of Witness</p> <p>13 _____</p> <p>14 _____</p> <p>15 Subscribed and sworn to before me, the</p> <p>16 undersigned Notary Public by said witness, Francesco</p> <p>17 Venturini, on this _____ day of _____, 2021.</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 NOTARY PUBLIC</p> <p>23 MY COMMISSION EXPIRES: _____</p> <p>24 JOB NO. 152609</p> <p>25 _____</p>
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<div>1 CERTIFICATE</div> <div>2</div> <div>3 I, Karli Daniels, Certified Shorthand Reporter,</div> <div>4 Registered Professional Reporter, Certified Court</div> <div>5 Reporter, do hereby certify that the above-named Francesco</div> <div>6 Venturini was by me first duly sworn to testify the truth,</div> <div>7 the whole truth, and nothing but the truth, in the case</div> <div>8 aforesaid; that the above and foregoing deposition was by</div> <div>9 me taken and transcribed pursuant to agreement, and under</div> <div>10 the stipulations hereinbefore set out; and that I am not</div> <div>11 an attorney for nor relative of any of said parties or</div> <div>12 otherwise interested in the event of said action.</div> <div>13 IN WITNESS WHEREOF, I have hereunto set my hand</div> <div>14 and official seal this 18th day of September, 2021.</div> <div>15</div> <div>16</div> <div>17 </div> <div>18</div> <div>19 KARLI DANIELS, CSR, RPR, CCR</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>26</div>	<div>Page 130</div> <div>35</div>